

**APPENDIX B**  
**RESPONSES TO PUBLIC COMMENTS RECEIVED ON THE FINAL EA**

Patricia McCabe

B1

Subject: FW: SR 195 - Yuma Area Service Highway

-----Original Message-----

From: Gayle Rusing <grusing@greateryuma.org>  
To: Melissa Maiefski <Mmaiefski@azdot.gov>  
CC: jchessum@gypa.org <jchessum@gypa.org>; James.ValenzuelaSr@aps.com  
<James.ValenzuelaSr@aps.com>; lucyship@aol.com <lucyship@aol.com>  
Sent: Wed Oct 05 16:51:05 2005  
Subject: SR 195 - Yuma Area Service Highway

Dear Ms. Maiefski,

B1-1

Greater Yuma Economic Development Corporation is a regional, public/private economic development organization representing the County of Yuma, the cities of Yuma, Somerton and San Luis, and the Town of Wellton. Our primary mission is to attract commerce and industry to the region, but we are also sensitive to the area's social and environmental well being.

We have researched the environmental aspects of this project and have established that it is in keeping with the sustainability of our county. We recommend the construction of this project and the accompanying commercial port of entry to be built in San Luis.

Gayle Rusing, CECD

President/CEO

Greater Yuma EDC

170 West 16 Street

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## Response to Comment B1-1

Comment will be noted in the project record.

B2

12439 E. Del Rico  
Yuma, AZ 85367  
3 October 2005

Ms. Melissa Maiefski  
Environmental & Enhancement Group  
Arizona Department of transportation  
1221 South 2<sup>nd</sup> Avenue, Mail Drop T100  
Tucson, AZ 85713-1602

Dear Ms. Maiefski,

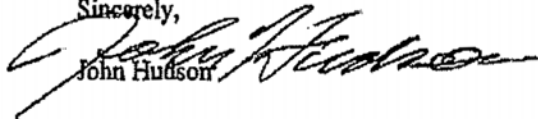
B2-1

This letter is in **STRONG SUPPORT of SR 195, The Area Service Highway** proposed project in Yuma County.

SR 195 is planned to run from the new commercial port of entry (San Luis II) on the border with Mexico to Interstate Highway-8 (I-8). The road is to run through the western edge of the Barry Goldwater Bombing Range and through open desert country and a small bit of agricultural land. It is evident from the Final Environmental Assessment that all environmental considerations have been given serious thought and, where appropriate, mitigation measures will be taken to protect any and all plants and creature species that may be along the planned route.

This route, known as the Yuma Area Service Highway, is essential to not just the Yuma community, but to western Arizona and, in fact, to the entire state. This route opens a western trade corridor from Mexico to the entire United States via the Interstate Highway System, and also from Mexico to Canada. The building and opening of this essential transportation link should move forward with full speed.

Sincerely,

  
John Hudson

**Response to Comment B2-1**

Comment will be noted in the project record.

B3



CALIFORNIA AND PACIFIC OFFICE

*protecting and restoring natural ecosystems and imperiled species through  
science, education, policy, and environmental law*

October 7, 2005

VIA EMAIL AND U.S. MAIL

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**Re: Yuma Area Service Highway Final Environmental Assessment and Section 4(f)  
Evaluation, Federal Project No. HPP-900-A(022)**

Dear Mr. Melendez, Mr. Thomas, and Ms. Simpson-Colebank,

**I. Introduction.**

These comments are submitted on behalf of the Center for Biological Diversity ("Center") on the Yuma Area Service Highway Final Environmental Assessment and Section 4(f) Evaluation, Federal Project No. HPP-900-A(022) ("Final EA"). These comments incorporate by reference the Center's earlier comments on the project as well as all comments submitted by the Yuma Audubon Society. The Center is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 14,000 members throughout Arizona and the western United States, including members residing in Yuma County where the proposed Yuma Area Service Highway (the "project") is located.

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**B3**

The Center objects to the approval of this project based on the inadequacy of the current environmental documents and Section 4(f) evaluation. As discussed in detail below, the Federal Highway Administration (“FHWA”) cannot approve a project of this type and magnitude based on an Environmental Assessment (“EA”). Because the project will significantly affect the environment, the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (“NEPA”) requires that an Environmental Impact Statement (“EIS”) be prepared. 42 U.S.C.A. § 4332(2)(C).

Even if this project could be approved on the basis of an EA alone, which it cannot, the final EA is inadequate and, therefore, any approval of the project based on the final EA would violate NEPA. The deficiencies in the final EA include, but not limited to, its: failure to identify and adequately analyze several significant environmental impacts of the project; failure to consider and analyze a meaningful range of alternatives to the project; failure to properly identify and analyze cumulative and secondary effects of the project; failure to provide adequate responses to public comment on the project; and improper segmentation of environmental review of the proposed project and integrally related projects.

The FHWA also failed to comply with the requirements of Section 4(f) of the Transportation Act of 1966 (now codified at 49 U.S.C. § 303(c)), in evaluating the project’s impacts. The deficiencies in the Section 4(f) Evaluation include, but not limited to, its: failure to properly identify and analyze impacts to lands set aside as a wildlife refuge – the Flat-tailed Horned Lizard (“FTHL”) Management Area; failure to examine prudent and feasible alternatives to using the FTHL Management Area for the proposed project; failure to choose a prudent and feasible alternative that would avoid impacts to the FTHL Management Area; and failure to use all possible planning to minimize harm to the FTHL Management Area resulting from the use.

## **II. The FHWA Violated NEPA by Failing to Prepare an EIS for the Project.**

### **A. Standard for Preparation of an EIS.**

The FHWA’s assertion that this new highway project which cuts through fragile desert lands, and encroaches on both military lands and a wildlife management area will not have *significant* impacts on the environment is nonsensical. *See, e.g.*, Final EA Appx. G-B-16 and G-B-53, Responses to Comments B2-1 and B4-39. It is clear at this juncture that the FHWA must prepare an EIS before considering approval of the Project.

The National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (“NEPA”) requires that an EIS be prepared for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C.A. § 4332(2)(C). Accordingly, the FHWA regulations clearly provide that an EIS must be prepared for projects which significantly affect the environment, such the Yuma ASH, which is both “a new controlled access freeway” and “a highway project of four or more lanes on a new location.” 23 C.F.R. § 771.115(a). Thus, pursuant to FHWA’s own regulations it must prepare an EIS for this project.

B3-1

## **Response to Comment B3-1**

The National Environmental Policy Act (NEPA) and related supporting regulations require that an Environmental Impact Statement (EIS) be prepared and approved when a proposed Federal action (e.g., the authorization for the use of Federal-aid Highway Program funds to construct a highway improvement) would cause *significant* impacts.

The Federal Highway administration (FHWA), as the lead federal agency, in cooperation with the US Bureau of Land Management (BLM), the US Bureau of Reclamation (Reclamation), the US Marine Corps Air Station Yuma (MCASY), and the US Navy, determined that an Environmental Assessment (EA) is the appropriate level of environmental documentation to evaluate the impacts of the Yuma Area Service Highway (ASH). This determination takes into account the FHWA regulations at 23 Code of Federal Regulations (CFR) §771.115(a), which specifies that a new controlled access freeway or a highway project of four or more lanes on a new location are examples of actions that normally require an EIS. These are types of actions that “normally” have significant affects on the environment. The completed environmental studies, evaluations, and public outreach conducted by the Arizona Department of Transportation (ADOT) and FHWA have not identified impacts resulting from the improvements that are *significant* according to 40 CFR 1508.27. While there are virtually no improvements without some negative effects, the efforts ADOT and FHWA have undertaken to identify possible negative effects have afforded substantial public input and involvement, considered a reasonable range of alternatives, evaluated the impacts in terms of context and intensity, and provided reasonable plans to mitigate and minimize any negative impacts. FHWA does not believe there is a legitimate basis for preparing an EIS.

**B3**

The Council for Environmental Quality (“CEQ”) regulations, 40 C.F.R. § 1500.1 *et seq.*, also provide a framework for determining whether a project may have a significant effect on the environment and require consideration of two broad factors: “context and intensity.” *See* 40 C.F.R. § 1508.27; 42 U.S.C. § 4332(2)(C). These factors are discussed in turn below.

**1. The context of the Project requires an EIS.**

Whether the issue is analyzed within the context of Yuma County, regionally, or nationally, it is clear that construction of this highway project mandates the preparation of an EIS. Southwestern Arizona’s Sonoran Desert has significant biological resources and is, unfortunately, also critically threatened by development and habitat destruction.

The proposed project will have direct, secondary, and cumulative impacts on the region including promoting sprawl development in fragile areas of the desert. The proposed project area will destroy and fragment FTHL habitat that is now part of the Yuma Desert FTHL Management Area. The FTHL Rangewide Management Strategy was developed to preserve FTHL habitat areas in both Arizona and California. The project’s proposed route will fragment FTHL habitat, significantly impacting lands currently managed as part of the FTHL Management Area, and encroach onto the bombing range at the Barry M. Goldwater Range (“BMGR”). The proposed project will destroy 623 acres of FTHL habitat and isolate over 3,600 additional acres of FTHL habitat that is part of Arizona’s only management area for this species—the Yuma Desert Flat-tailed Horned Lizard Management Area. *See* Final EA at 95. In addition to completely destroying the biological resources on the project site and fragmenting FTHL habitat, the project will facilitate urban sprawl development along the proposed route which will, in turn, destroy additional habitat and open space and adversely impact the long-term viability of the BMGR – an impact of local, regional, and national significance. The mitigation measures suggested in the EA are entirely inadequate to address these impacts.

Clearly, the context of the proposal clearly warrants the preparation of an EIS.

**2. The intensity of the Project requires an EIS.**

The factors that must be considered in determining the intensity of the action are set forth at 40 C.F.R. § 1508.27. These include the degree to which the proposed action affects public health or safety, unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas, the degree to which the effects on the quality of the human environment are likely to be highly controversial, the degree to which the possible effects on the human environment are highly uncertain, whether the action is related to other actions with individually insignificant but cumulatively significant impacts, the degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act, and other factors. Furthermore, FHWA must consider the secondary effects of the project in the area, such as the fact that the project will facilitate urban sprawl development along its route.

**Response to Comment B3-2**

Construction of the ASH will not directly impact the Yuma Desert Management Area (MA), and indirect impacts from the ASH will not adversely impact the MA. There will be no direct impacts because planning for the ASH predated the designation of the Yuma Desert MA; the 1997 *Flat-tailed Horned Lizard* (FTHL) *Rangewide Management Strategy* (RMS) and its 2003 revision specified for the western MA boundary to be set at the ASH right-of-way line. This discussion is included on page 91 of the *August 2005, Final Environmental Assessment* (FEA), where it is stated that “Because the ASH was considered during the development of the RMS and the designation of the MA, the ASH will be located outside of the MA and will be the new boundary of the MA if the ASH were constructed along the existing MA boundary.” US Fish and Wildlife Service’s (USFWS) draft Conference Opinion (attached) on the project’s effects on the FTHL states, “The ASH does not impact the Yuma Desert MA except indirectly in that it may help form an effective barrier through construction and maintenance of a right-of-way fence, plus regulatory and interpretive signing.” The physical boundary provided by the right-of-way and lizard barrier fencing is likely to benefit FTHLs in the Yuma Desert MA by restricting access, supporting the long-term viability of the MA. Young and Young (2005) suggested that the road might actually be a benefit in areas where an agricultural field currently borders the Yuma Desert MA.

**Response to Comment B3-3**

As stated on page 49, of the *August 2005, FEA*, “MCASY [Marine Corps Air Station Yuma] has also stated a preference for the ASH to be located inside the BMGR [Barry M Goldwater Air Force Range] so that unwanted encroachment by commercial and residential development adjacent to the roadway can be prevented. There will be no access to the ASH from within the BMGR.”

**Response to Comment B3-3 (cont'd)**

Additionally, on page 51 of the *August 2005, FEA*:

MCASY is concerned that urban encroachment in the immediate vicinity of the BMGR may prevent it from continuing military operations in the future. Development in the surrounding area of the BMGR would restrict the current functions and limit the use of land. The ASH would not encourage future development because the roadway would be access controlled.

In a December 16, 2002 (Appendix A of the *August 2005, FEA*), memorandum from the Deputy Director of the Joint Law Center at MCASY to the MCASY Facilities Manager, the Deputy Director states, "development of the ASH will act as a buffer to further encroachment on the Barry M. Goldwater Range." An e-mail dated July 1, 2003 (Appendix A), from the MCASY Facilities Manager to the ADOT Project Manager acknowledges,

... [D]evelopment along the ASH from Araby Road south to the BMGR and from the BMGR west to Avenue E would more than likely occur on both sides of the ASH. This development does not encroach on aircraft operations performed within the BMGR or [MCASY]. MCAS[Y] does not object to development within these areas.

For the 9 miles that the ASH will be located within the BMGR, the Marine Corps will have management responsibility. The MCASY Facilities Manager e-mail communication of July 1, 2003, to the ADOT Project Manager continues,

Building the ASH within the BMGR would not encourage private development along the road

**Response to Comment B3-3 (cont'd)**

because the property is owned by the Federal Government. This highway would be a high-speed expressway without any development or interchanges on the portion of land within the BMGR. If the alternative route which is outside the BMGR and somewhere within the 2½ miles separating the BMGR from MCAS[Y] were used, incompatible encroachment would occur. The alternative would also encourage development under the only remaining overflight pattern for MCAS[Y]. Presently the Joint Land Use Plan provides protection to MCAS from incompatible development within this area. If the ASH is built through this area instead of on the BMGR, then pressure ... to build adjacent to the route would occur. MCAS[Y] is not the controlling authority for this land; however, MCAS[Y] is the controlling authority for land within the BMGR. If encroachment happens in this alternate route area, it would negatively impact on the mission of MCAS.

According to representatives from MCASY there will be *less* cumulative development and resultant encroachment by locating the ASH *within* the BMGR than by locating it on an alignment near—but *outside*—the BMGR. The relevant military input reflected in this conclusion about potential encroachment by development has been part of the planning process for the ASH from its earliest conceptions.



B3

Based on the information contained in EA, the environmental impact of this project can only be considered extremely intense. The EA itself admits that the ASH “would be a major transportation facility and travel corridor.” EA at 9. The project will impact lands set aside for wildlife conservation, the project has been extremely controversial, the impacts of the project on the environment are highly uncertain, the secondary impacts of the project are significant, and the combined impact of the project and other projects in the area will be cumulatively significant.

B3-4

The proposed project will severely impact the FTHL and fragment its unique habitat within the FTHL Management Area. The project may also adversely affect the following species due to increased habitat fragmentation and direct loss of suitable habitat: Sonoran Pronghorn, a federally listed endangered species; Cowles Fringe-toed Lizard; Mountain Plover; Sand Food; and other native plant species. The impacts to listed, rare, sensitive, and endemic species alone warrant the preparation of an EIS.

B3-5

The project will also directly encroach on the BMGR and encourage secondary development along the proposed route. Increased development on the borders of the BMGR will adversely impact the long-term viability of the BMGR – an impact of local, regional, and national significance. Finally, the proposed project will contribute significantly to air pollution and noise in the area – destroying the rural character of the area for no reason.

It is indisputable that NEPA mandates the preparation of an EIS for this Project when viewed in the local, regional, and national context. Here, the project will be the first step in facilitating development south of the City of Yuma in fragile desert lands, will fragment FTHL habitat in the area, will encroach on public lands set aside for other purposes, and will impact the long-term viability of the BMGR for military uses. The project also has the potential to set a precedent of allowing fragmentation of habitat preserved for wildlife conservation. Because the project’s intensity confirms that it will have significant effects on the environment, FHWA cannot proceed with this project without preparation of an EIS.

**B. The EA is Inadequate to Comply with NEPA.**

**1. The identification and analysis of the Project’s effects on biological resources is inadequate.**

B3-6

The EA fails to properly identify and analyze the project’s direct, secondary, and cumulative effects on biological resources. Although the EA provides some information about the proposed project’s direct effects on the FTHL, it fails to adequately identify and analyze the effects to the environment, and specifically the FTHL, of alternatives to the proposed route. The Final EA acknowledges that “[e]ach of the alternatives considered would result in less direct habitat loss to the FTHL than the Preferred Alternative.” Final EA at 91. Nonetheless, FHWA makes no effort to revise the preferred alternative or meaningfully explore other alternatives that would avoid or minimize impacts to the FTHL, as contemplated by the NEPA process. Rather, the EA focuses on justifying FHWA’s choice of the most environmentally damaging alternative. See Final EA at 91.

Comments on Final EA for Yuma ASH  
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**Response to Comment B3-4**

Construction of the ASH will directly impact approximately 623 acres of FTHL habitat on lands under the jurisdiction of agencies that are signatory to the FTHL Conservation Agreement. USFWS identified an additional 80 acres of FTHL habitat that will be directly impacted on private lands in their draft Conference Opinion. The FTHL Interagency Coordinating Committee (ICC) determined that approximately 3,654 acres will be indirectly impacted; combining the 623 acres that will be directly lost to the ASH right-of-way, the additional 80 acres of loss identified by USFWS, and the 3,654 acres identified by the FTHL ICC, there will be a total of approximately 4,357 acres impacted by the ASH. Using this figure and USFWS’s estimate of 1,243,340 acres of FTHL habitat remaining in the U.S., approximately 0.35 percent\* of the total remaining habitat in the U.S. will be directly or indirectly impacted. Also, much of the ASH corridor consists of degraded habitat and habitat that is already being indirectly impacted by adjacent land uses.

These relatively small percentages of combined direct and indirect impacts to FTHL habitat are not considered severe or significant. While the project will impact the FTHL and a small percentage of its habitat that occurs in proximity to existing development, the bulk of this species’ habitat in Arizona (84 percent of the FTHL habitat remaining in Arizona) will remain protected indefinitely under the FTHL Conservation Agreement. In addition, 77 percent of the

\*A mathematical error was made in calculating the percentage of habitat affected on pages 89 and 119 of the *August 2005, FEA*; the decimal point should have been moved over two places to the right in converting the decimal ratio to a percentage. While this represents a difference in the mathematical representation of the percent difference in remaining FTHL habitat in the *August 2005, FEA*, the analysis of direct, secondary, and cumulative impacts on the FTHL considered the actual number of acres that will be impacted and the number of acres that will remain.

**Response to Comment B3-4 (cont'd)**

FTHL habitat in Arizona is currently within the Yuma Desert MA. As discussed in the Response to Comment B3-2, the project will not directly impact the Yuma Desert MA, and there may be beneficial indirect effects from the construction of the ASH and fencing along the right-of-way.

Although a minimal amount of habitat will be lost in Arizona, vulnerable habitat in California will be set aside and protected under the mitigation plan. There is a substantial threat of FTHL habitat loss in California because of the amount of FTHL habitat on private lands that are planned for development. Because most of the FTHL habitat in Arizona is on federal land that is managed for FTHLs through the Conservation Agreement and RMS, compensation funds will be used to purchase land that is critical to FTHL conservation in California and to address other management issues in FTHL conservation. Habitat compensation for the ASH will, therefore, offset the loss of FTHL habitat in Arizona by adding to the size and connectivity of FTHL MAs in California. This approach to habitat compensation was approved by MCASY, Reclamation, US Bureau of Land Management, YMPO, USFWS, and the Arizona Game and Fish Department in January-March 2005, as indicated in the letters on pages A-139 through A-146 of the *August 2005, FEA*.

The USFWS concurred with the determination that the project is not likely to adversely affect the Sonoran pronghorn. While potentially suitable pronghorn habitat occurs in the project area, USFWS stated in the Biological Opinion for the project that "Because Sonoran pronghorns currently do not occur in the Yuma Desert and are unlikely to colonize this area on their own, and as a result of past and current human occupation and/or existing land uses

**Response to Comment B3-4 (cont'd)**

west of the project, pronghorn movement across the ASH is not anticipated to occur." Therefore, while potentially suitable habitat will be lost, this loss will occur in an area that is not currently utilized by Sonoran pronghorn and where pronghorn are not expected to occur in the future.

Cowles fringe-toed lizard is included on the Arizona Game and Fish Department list of Wildlife of Special Concern in Arizona, although this designation does not grant any legal protection. As discussed on page 99 of the *August 2005, FEA*, the ASH will impact suitable habitat for the Cowles fringe-toed lizard in an area of partially stabilized, low sand dunes near County 19th Street and Avenue 4E.

Approximately 63 acres of habitat for the Cowles fringe-toed lizard will be lost to the ASH right-of-way, a small area of habitat to the west of the ASH alignment will be fragmented from suitable habitat to the east, and Cowles fringe-toed lizards may be impacted during construction and as a result of traffic operations on the ASH. While there will likely be direct, secondary, and cumulative impacts on this species and its habitat in the project area, the partially stabilized sand dunes present in the project area do not represent the preferred active dune habitat of this species, which occurs to the east of the project area on the Yuma and Mohawk Dunes. The habitat area that will be fragmented to the west of the ASH is the site of an existing commercial sand and gravel operation and is not critical to the conservation of this species. As mentioned in the *August 2005, FEA*, the alignment modifications that have been made have decreased the amount of habitat that will be lost and mitigation measures that will be implemented to protect the FTHL will also reduce impacts to the Cowles fringe-toed lizard. Therefore, the ASH may impact individuals of Cowles fringe-toed lizard, but is not likely to result in a trend toward federal listing or loss of viability.

**Response to Comment B3-4 (cont'd)**

The mountain plover is no longer proposed for listing under the Endangered Species Act (ESA); however, effects to this species were considered during project planning and formal Section 7 consultation with USFWS was completed prior to its removal from consideration for ESA listing. Potential impacts were from the conversion of approximately 19 acres of farmland and possibly collisions with traffic on the ASH. While most mountain plovers winter on grasslands and cultivated fields in California, the loss of farmland resulting from construction of the ASH will not impact this species' winter use of farmland in the Yuma area because of the substantial amount of farmland remaining in the area. In its Biological Opinion for the project, USFWS estimated that collisions with vehicles on the ASH could result in the take of one mountain plover per year, which it determined will not jeopardize the continued existence of the species. As previously mentioned, the mountain plover is no longer being considered for listing under the ESA, and the potential impacts from the ASH are not likely to result in a trend toward federal listing or loss of viability.

Sand food is more commonly found in association with active sand dunes, such as the Algodones Dunes to the west of the project area in California, although potentially suitable habitat occurs in the project area in locations with sandy soil and native vegetation. All areas of potentially suitable habitat within the ASH right-of-way were surveyed for the presence of sand food in April 2006 and a small population of sand food was detected in the disturbed road shoulder of an existing roadway, within 5–20 feet of the existing pavement edge. A total of 26 individual sand food inflorescences were recorded; it is difficult to determine whether individual inflorescences are from the same sand food plant or from different plants without excavating the root system of the host plant and, as a result, the true

**Response to Comment B3-4 (cont'd)**

number of sand food plants present may be fewer than 26. Additional coordination with the Arizona Department of Agriculture has resulted in the adoption of mitigation measures to address impacts to sand food in the project area (refer to the Arizona Department of Agriculture's July 28, 2005, letter outlining the mitigation recommendations in Appendix A). The ADOT Environmental Planning Group will check with the Arizona Department of Agriculture to determine if any organizations are interested in transplanting or collecting sand food from the project area for research purposes. If there is no appropriate party interested in taking the sand food plants from the project area for research, the contractor shall move any individuals found within the construction area to the perimeter of the construction area to spread seed to the new road perimeter. The contractor shall move these individuals by scooping a cubic yard of substrate surrounding each plant and stockpiling the material to spread within 20 feet of the new roadway edge when construction is completed. In addition, the contractor shall stockpile the top 6 inches of topsoil removed from the area of sand food occurrence for rehabilitation of the right-of-way following construction. In summary, there will be direct impacts to a known population of sand food and areas of potentially suitable habitat in the project area, although the sandy soils present in the project area do not represent the preferred active dune habitat of this species. Therefore, the preferred alternative may impact individual sand food plants, but is not likely to result in a trend toward federal listing or loss of viability for this species.

While the project will have direct, secondary, and cumulative impacts on special status species, these impacts are not considered significant and therefore do not require additional analysis in an EIS. Project-related impacts to special status species have been minimized

**Response to Comment B3-4 (cont'd)**

through modifications to the ASH alignment, when possible, and mitigation measures have been developed to minimize or mitigate for impacts through all phases of the project.

**Response to Comment B3-5**

Refer to Response to Comment B3-3.

The ASH will not encourage future development along the BMGR, adversely impacting the long-term viability of the BMGR, because the ASH will be access controlled and incorporated within the BMGR boundaries. This will restrict access to the BMGR and the potential for development along the western boundary. In addition, the ASH will be outside the operational airspace boundary. MCASY expressed a preference for the ASH to be located inside the BMGR so that unwanted encroachment by commercial and residential development adjacent to the roadway can be prevented. There will be no access to the ASH from within the BMGR.

**Response to Comment B3-6**

The Draft Environmental Assessment (DEA) was completed in June 2003, and presented to the public in a public hearing on June 12, 2003. As a result of comments received from the public, stakeholders, and organizations, one additional corridor was developed and evaluated as well as refinements to the DEA Preferred Alternative. FHWA considered refinements to the Preferred Alternative to avoid or minimize impacts to the FTHL. The discussion of the refinements are located in the *August 2005, FEA* Section II. C. c. Southern Curve Refinement and Section II. C. d. Northern Curve Refinements (specifically on page 37). As stated in the *August 2005, FEA*, the Southern Curve Refinement will allow for the conservation of an additional 240 acres of suitable habitat for the FTHL and the Northern Curve Refinement will allow for the

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B3-7

By choosing the alternative that is the most damaging to the FTHL and its habitat as the preferred alternative, FHWA has also failed to comply with its commitments under the Flat-tailed Horned Lizard Rangewide Management Strategy ("RMS"). FHWA notes that pursuant to the RMS it agreed that "every attempt would be made to locate projects outside of [management areas]." Final EA at 91. Although several of the alternatives mentioned in the EA would have far fewer impacts to the FTHL, FHWA fails to adequately explore those alternatives and, instead, has chosen an alternative that will destroy 623 acres of FTHL habitat and isolate over 3,600 additional acres of FTHL habitat in the Yuma Desert Flat-tailed Horned Lizard Management Area. See Final EA at 95. Clearly, FHWA has not taken seriously its commitment to attempt to locate the project outside of FTHL management areas.

B3-8

The EA fails to properly analyze secondary and cumulative impacts to the FTHL from fragmentation of habitat and the growth inducing aspects of the project. See Final EA at 112. For example, it is incontrovertible that building a new highway along the proposed route will encourage urban sprawl in a rural area. However, the EA fails to analyze the secondary and cumulative impacts to the FTHL from such development. See, e.g., Final EA at 97 (noting that "a large-scale private development is expected in the area of the A Canal concurrent with the construction of the ASH"). The Final EA simply mentions that development may occur but fails to provide any analysis of the magnitude of the likely secondary and cumulative effects on the FTHL or other biological resources from such growth. See Final EA at 112, 119. Moreover, the analysis of cumulative impacts to the FTHL fails to properly account for the effects of habitat fragmentation and masks the cumulative impacts to the FTHL and its habitat by calculating the lost habitat from the project against a baseline of all remaining habitat in the U.S. rather than to the habitat available in Arizona or in the Yuma Desert FTHL Management Area. See Final EA at 119.

B3-9

The EA briefly mentions, but does not sufficiently analyze, direct, secondary, and cumulative effects of the proposed project on other species. For example, the EA notes that there may be direct impacts to several species including the Sonoran pronghorn, Sand food, Peirson's milk-vetch, Mountain Plover, and Cowles Fringe-toed Lizard. See Final EA at 83-101. However, there is no meaningful discussion of the secondary and cumulative impacts to these species from the growth inducing effect of the project or from related projects such as the new international port of entry. See Final EA at 111-113, 118-120. Rather the EA provides only conclusions not analysis. The failure to properly identify and analyze direct, secondary, and cumulative impacts to the biological resources that will be impacted by the project violates NEPA.

B3-10

A recent court decision found that withdrawal of the proposed rule to list the Flat-tailed Horned Lizard by the Secretary of the Interior was arbitrary and capricious and the Court set aside the withdrawal. See *Order, Tucson Herpetological Society, et al., v. Norton, et al.*, Case No. CV 04-0075-PHX-NVW. The reinstatement of the listing rule means that the FTHL is, once again, a species "proposed to be listed." ESA § 7(a)(4), 16 U.S.C. § 1536(a)(4). Therefore, because the project will significantly affect the FTHL and its habitat, FHWA is required to confer (or re-confer) with the Fish & Wildlife Service regarding the impacts to the species. ESA § 7(a)(4), 16 U.S.C. § 1536(a)(4).

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**Response to Comment B3-6 (cont'd)**

conservation of an additional 178 acres of suitable habitat for the FTHL.

In addition, the use of culverts to allow lizards to cross under the roadway was considered to maintain connectivity on both sides of the roadway. The use of culverts for this purpose was problematic because it is not known if lizards will use such a crossing. Therefore, FHWA has funded a research project to test different culvert configurations to determine if culverts could be used as effective lizard crossings.

**Response to Comment B3-7**

While FHWA is not a signatory to the FTHL Conservation Agreement and is not directly bound to the provisions of the RMS, construction of the project will occur on lands managed by signatory agencies that are required to follow the prescriptions of the RMS in approving activities on public lands. Therefore, FHWA must meet the requirements of the RMS in order to obtain permits from these agencies. ADOT and FHWA have worked closely with signatories of the FTHL Conservation Agreement during all phases of the project. The Yuma Desert MA for the FTHL was planned jointly with the ASH, stipulating that the western boundary of the MA will be the ASH alignment. A FTHL mitigation plan for the ASH has been drafted by the project proponents and approved by the FTHL ICC and Management Oversight Group (MOG). The mitigation plan is based on the Planning Actions identified in the RMS, other input from signatory agencies and ICC/MOG members, and recommendations made by USFWS. The plan includes such measures as lizard barrier fencing, biological monitoring, contractor training, and compensation for suitable FTHL habitat that will be impacted by the project. The mitigation plan goes above and beyond the requirements outlined in the 1997 (and revised 2003)

**Response to Comment B3-7 (cont'd)**

RMS, and FHWA and ADOT will continue working with signatories of the Conservation Agreement to reduce potential impacts to the FTHL throughout all phases of the ASH project.

For additional discussion, refer to the Response to Comment B3-4.

**Response to Comment B3-8**

Property adjacent to the highway is comprised of Barry M. Goldwater Range lands (38.6 percent), other federal lands (31.6 percent), state lands (8.2 percent), and private lands (21.6 percent). Of the private lands adjacent to the highway, 10.8 percent are currently undeveloped with no current plans for development, 46 percent are planned for future development, and 43.2 percent are already developed. Relative to the total land area adjacent to the ASH, privately owned lands that are developed or that are currently planned for future development make up 19.3 percent, and privately owned lands that are currently undeveloped with no current plans for future development make up 2.3 percent. The Selected Alternative is an access-controlled facility, with traffic interchanges located at the Arizona State Prison Complex –Yuma, at County 14th Street, Business Route 8, and I-8. As a result of this controlled access, there are limited areas where development associated with the highway is likely to occur. The combination of the small percentage of privately owned land that is available for development and controlled access to and from the ASH demonstrates that there are only minor “growth inducing aspects” of the highway, and the impact to the FTHL from growth that is induced by the ASH will therefore be insignificant.

The most current estimate of the current amount of suitable habitat for FTHLs in Arizona is 158,844 acres. The most current estimate of suitable habitat remaining in the U.S. is



**Response to Comment B3-8 (cont'd)**

approximately 1,243,340 acres. Construction of the ASH will directly impact approximately 623 acres of FTHL habitat on lands under the jurisdiction of agencies that are signatory to the FTHL Conservation Agreement. USFWS identified an additional 80 acres of FTHL habitat that will be directly impacted on private lands in their draft Conference Opinion. The FTHL ICC determined that approximately 3,654 acres will be indirectly impacted; combining the 623 acres that will be directly lost to the ASH right-of-way, the additional 80 acres of loss identified by USFWS, and the 3,654 acres identified by the FTHL ICC, there will be a total of approximately 4,357 acres impacted by the ASH. Using this figure and the estimate of 1,243,340 acres of FTHL habitat remaining in the U.S., approximately 0.35 percent of the total remaining habitat in the U.S. will be directly or indirectly impacted. This relatively small percentage of fragmented FTHL habitat is not significant in size compared to the overall amount of suitable habitat currently available for the FTHL. In addition, there has been extensive coordination with the FTHL ICC, FTHL MOG, Arizona Game and Fish Department, and USFWS to develop project mitigation for the FTHL, including habitat compensation for lost and fragmented habitat to offset secondary and cumulative impacts.

**Response to Comment B3-9**

Impacts to vegetation and wildlife in general have been identified and addressed in the *August 2005, FEA*; in addition to the FTHL, the other special status species that were analyzed in detail in the *August 2005, FEA* include the Sonoran pronghorn, Peirson's milk-vetch, mountain plover, Cowles fringe-toed lizard, and sand food. Direct, secondary, and cumulative impacts were analyzed for each of these species, which were identified as having potential habitat in the project area through biological investigations conducted during project planning. A summary of the project's effects

**B3**

The project, as proposed, will directly impact individual FTHL, destroy hundreds of acres of FTHL habitat, and fragment essential FTHL habitat. The reinstatement of the listing rule will require FHWA to: reevaluate the impacts of the project to the lizard; undertake supplemental environmental review of the project; and confer with the U.S. Fish & Wildlife Service regarding the direct, indirect and cumulative effects of the project on the lizard. Indeed, the reinstatement of the proposed listing rule could also constitute “significant new circumstances or information” pursuant to the CEQ regulations. *See* 40 CFR 1502.9(c). Therefore, FHWA may be required to prepare supplemental environmental review for the project. *See* 40 CFR 1502.9(c). In order to comply with NEPA, any supplemental environmental review should be part of a comprehensive EIS for the proposed project.

B3-11

**2. There is no need for the Project along the proposed route.**

The FHWA has not established that the proposed project is necessary at all. As detailed by the Yuma Audubon Society, the EA overestimates the increase in traffic that can be reasonably expected over the next 10 to 25 years from the port of entry and other sources. Further, the EA itself notes that the primary reason that there is a need for additional highway capacity in the area is the limit on the capacity of Highway 95 due to slow farm-related traffic. *See* Final EA at 4. Nonetheless, the EA fails to examine any alternative that addresses the need identified – for example, by increasing the capacity of Highway 95, providing secondary roads or service roads along the Highway 95 corridor that could accommodate slow farm traffic, or providing dedicated lanes for slow traffic along Highway 95. Such alternatives would have far fewer environmental impacts and directly address the issue that has created the need for additional highway capacity. In contrast, the measures proposed in Alternative 2 to improve the traffic control system along Highway 95, provide so little change to the current situation that this alternative appears to be a “straw man” simply set up by FHWA to be knocked down. *See* Final EA at 29.

B3-12

The EA also asserts that the project is needed to remove commercial truck traffic and hazardous cargo from congested areas. Final EA at 8. However, the FHWA has failed to show that there is a real need for an additional highway along the proposed route to accommodate truck traffic and hazardous cargo transport. Even if a need for additional highway capacity does exist, there is no necessity that such traffic be directed only along the proposed route. Indeed, the City of Yuma’s 2005 Major Roadways Plan indicates that, even without the ASH, there are many other routes that are designated for truck traffic in the area (*see* 2005 Major Roadways Plan at 25), and there are more than sufficient routes designated for hazardous waste transport (*see id.* at 26).

B3-13

**3. The identification and analysis of alternatives to the Project in the EA is inadequate.**

Even if FHWA’s reliance on an EA were proper, which it is not, the Final EA for the project fails to examine a meaningful range of alternatives in violation of NEPA. NEPA requires that all environmental assessments, as well as environmental impact statements, include an

B3-14

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**Response to Comment B3-9 (cont’d)**

on special status species is provided in the Response to Comment B3-4.

**Response to Comment B3-10**

As a result of the court decision that set aside USFWS’s withdrawal of the proposal to list the FTHL, FHWA submitted a written request to USFWS for formal conference under Section 7 of the ESA on September 8, 2005, in order to address the FTHL as if it were a listed species. USFWS has been actively involved in the development and approval of measures to mitigate potential impacts to the FTHL from the ASH, and the project is in full compliance with the requirements of the FTHL RMS. USFWS issued a draft Conference Opinion on October 14, 2005. The USFWS draft Conference Opinion is available at the offices of FHWA and ADOT. USFWS was unable to complete formal conference for the FTHL because the proposal to list the species was withdrawn on June 28, 2006, and a final Conference Opinion was not issued. USFWS provided a response letter to FHWA on December 20, 2006 (attached), in which USFWS stated that the proposal to list the FTHL had been withdrawn and reiterated ADOT and FHWA’s previous commitments to FTHL mitigation under the FTHL Conservation Agreement. Furthermore, at the request of ADOT and FHWA, USFWS sent an additional letter documenting the close of the USFWS coordination process, taking into account the current legal status of the FTHL. Should the legal status of the FTHL elevate prior to the completion of the ASH, FHWA and ADOT will re-open dialogue with the USFWS and will fulfill all legal responsibilities under the ESA.

**Response to Comment B3-11**

As referenced, 40 CFR 1502.9(c) refers to the preparation of an EIS, therefore, the supplemental environmental

**Response to Comment B3-11 (cont'd)**

review would not apply to this EA. Refer to Response to Comment B3-1.

EAs are updated throughout the NEPA process, with new information appearing in later versions of the document, in the administrative record, and in the responses to comments on the EA. The *August 2005, FEA* incorporates the most recent and accurate information available.

**Response to Comment B3-12**

The *August 2005, FEA* Section II. A. 1. e. 1988 ASH Corridor Option E does include the use of US 95. As stated on pages 15 and 16, of the *August 2005, FEA*:

This option would have the lowest cost of all the alternatives because no new corridor construction would be required. There would be no access control along the corridor, and this corridor would result in commercial truck traffic and hazardous cargo continuing to travel through the communities of San Luis, Gadsden, Somerton, and the City of Yuma. Option E would result in the densest vehicle congestion and impact the most developed land of the 1988 corridor options. Through the *Interstate 8 & US 95 Corridor Study*, it was apparent that the existing US 95 cannot accommodate future traffic demand and that a new corridor is needed in addition to improvements on US 95 and therefore this alternative would not meet the projects evaluation criteria. The 1988 ASH Corridor Option E would also require 12 canal crossings (including multiple crossings of two known historic canals); potentially impact ASLD [Arizona State Land Department] administered and tribal lands, which could require tribal easements and extensive coordination; impact the second-highest amount of farmland of all the 1988 corridor options; potentially encroach on the

**Response to Comment B3-12 (cont'd)**

MCASY, and may conflict with the MCASY APZ. Option E would impact 2 miles of suitable FTHL habitat and 23 miles of mountain plover habitat. Under this corridor option, there would be no impacts to habitat for the Sonoran pronghorn or Peirson's milk-vetch.

Providing secondary roads, service roads, or dedicated lanes for slow traffic along the US 95 corridor would be components of the 1988 ASH Corridor Option E.

**Response to Comment B3-13**

By the year 2023, the existing local roadway network will maintain an estimated total traffic volume of 62,000 vehicles. This estimate is for north-south traffic movement, directly north of County 23rd Street, and is based on roadway classification type and number of through travel lanes. The capacity of the network for the year 2023 will be 49,120, creating a level of service (LOS) F. With the construction of the ASH the capacity for north-south movement will be 103,120, creating a LOS B.

The Yuma Metropolitan Planning Organization (YMPO) proposes an extension of Somerton Avenue to County 23rd Street to alleviate some of the capacity deficiencies. Although by the year 2023, with the extension of Somerton Avenue and without the construction of the ASH, the local network will still be at a LOS F for north-south movement. A major portion of the existing truck traffic currently on US 95 will be diverted on to the ASH. The more relevant factor is the type of traffic being removed from US 95 as opposed to the direct number of vehicles. The ASH will divert truck traffic from conflict with personal vehicles.

**B3**

B3-15

examination of alternatives to the proposed action. 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. § 1508.9(b); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-29 (9th Cir. 1988). The alternatives analysis is central to any environmental analysis. 40 C.F.R. § 1502.14. An alternatives analysis must “rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. “The existence of reasonable but unexamined alternatives renders an EIS inadequate.” *Friends of Southeast's Future*, 153 F.3d 1059, 1065 (9th Cir. 1998). In analyzing alternatives, “[a]n agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992) (internal quotation omitted). The rule is no different for the preparation of an EA. Here, the EA fails to examine any reasonable alternative along a different route and rejects out-of-hand many such alternatives put forward over the last 10 years although these alternatives fit within the nature and scope of the action and would avoid or minimize impacts to biological resources.

B3-16

The EA notes that many project alternatives along alternate routes have been rejected by FHWA on a variety of pretexts over the last 10 years. The FHWA’s failure to rigorously explore and objectively evaluate these alternatives in the Final EA renders it inadequate. The Final EA examines in detail only: two alternatives that follow essentially the same route (*see* Final EA at 31, 32); a no action alternative; refinements on the preferred alternative along the same basic route (Alternative 5); and an alternative that would ostensibly improve use of the existing Highway 95 (Alternative 2). As noted above, Alternative 2 is such a weak alternative that it appears to have been developed simply to be cast aside. *See* Final EA at 29. The Final EA fails to analyze in detail any meaningful alternative along an alternate route that would avoid or minimize the significant impacts of the project on the FTHL and its habitat. Thus, on its face, the Final EA fails to analyze a reasonable range of alternatives to the proposed project in violation of NEPA.

**4. The EA improperly limited the scope of the action considered.**

B3-17

The scope of the action defines the range of alternatives and impacts that must be considered in the EIS or EA. *See* 40 C.F.R. § 1508.25. Where one or more actions are connected they should be considered in a single EIS. Actions are connected where they are “interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. § 1508.25(a)(iii). Here, the Yuma ASH and the new international port of entry each depend on the other for their justification and, therefore, should have been considered in a combined or programmatic EIS.

The Yuma ASH is part of a larger project that includes the relocation of the Port of Entry at San Luis (“POE”). From the start of the planning process it has been evident that the POE and the ASH are intricately intertwined and they remain so today. Indeed, the Purpose and Need section of the EA for the POE states clearly that the ASH and the POE were integrally linked.

To address the increasing volumes of traffic and trade vehicles crossing the border at San Luis-San Luis Rio Colorado, an integrated set of improvements to the Mexican and U.S. port of entry system has been prepared along with the construction of the Area Service

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**Response to Comment B3-14**

The *August 2005, FEA* examines 19 alternatives in three planning stages. This includes 11 alternatives in the early corridor planning stages: 7 corridor alternatives within the 1988 *Interstate 8 & US 95 Corridor Study* (six alternatives and one recommended corridor), 3 corridor alternatives in the 1989 *1990-2010 Countywide Transportation Plan Options* (two corridor options and one recommended corridor), and one 1994 Yuma City/County-adopted ASH corridor alternative. During the development of the Major Investment Study and NEPA studies 5 alignments were evaluated: the 1995 Corridor Alignment (including 3 alignment refinements), Alternatives 2, 3, 4, and a No Action Alternative. After the DEA, 3 additional alternatives were considered: the 2003 ASH Western Corridor, Alternative 5 (including four alignment refinements), and the Preferred Alternative.

It is FHWA’s opinion that the *August 2005, FEA* properly analyzes a range of alternatives. Please refer to Section II. Alternatives Considered, of the *August 2005, FEA*.

**Response to Comment B3-15**

The *August 2005, FEA*, Section II. Alternatives Considered is discussed in three separate sections, A. Alternative Planning Corridors Considered – Early Planning Stages, B. Alternative Planning Corridors Considered – Major Investment Study/National Environmental Policy Act Studies, and C. Alternative Planning Corridors and Alignments Considered – Post Draft Environmental Assessment. Section II.C. Alternative Planning Corridors and Alignments Considered – Post Draft Environmental Assessment, evaluates an additional corridor based on public and agency input from the June 12, 2003, public hearing regarding the DEA. Therefore, it is FHWA’s opinion that the *August 2005, FEA* properly analyzes a range of alternatives.

**Response to Comment B3-16**

The *August 2005, FEA*, Section II. Alternatives Considered is discussed in three separate sections, A. Alternative Planning Corridors Considered – Early Planning Stages, B. Alternative Planning Corridors Considered –Major Investment Study/National Environmental Policy Act Studies, and C. Alternative Planning Corridors and Alignments Considered – Post Draft Environmental Assessment. Section II.C. Alternative Planning Corridors and Alignments Considered – Post Draft Environmental Assessment, evaluates an additional corridor based on public and agency input from the June 12, 2003, public hearing regarding the DEA. Sections II. C. 2. c. Southern Curve Refinements and d. Northern Curve Refinement were evaluated after receiving comments on the DEA to reduce the amount of fragmented BMGR lands while maintaining all necessary design features. These two refinements will allow for the conservation of an additional 418 acres of suitable habitat for the FTHL on the BMGR. Therefore, it is FHWA's opinion that the *August 2005, FEA* properly analyzes a range of alternatives, including measures that will minimize impacts to the FTHL and its habitat.

**Response to Comment B3-17**

The new Port of Entry (POE) will function without (i.e., independent of) the development of the ASH. Without the ASH commercial traffic will be routed along Avenue E to County 23rd Street, where vehicles will then travel existing surface city and county streets. Traffic will also travel west along County 23rd Street back to US 95 northbound as currently required, increasing traffic and congestion through San Luis, Gadsden, Somerton, and the City of Yuma. Additionally, without the new POE commercial traffic will use the existing POE and travel north to County 23rd Street, then east to the ASH.

B3

Highway. Relocation of the port of entry provides a more efficient connection between trade routes from Mexico and U.S. roadways and to the Area Service Highway.

Final EA, San Luis, Arizona Commercial Port of Entry Project, p.1-2, available at <http://www.gypa.org/publications.htm>. Likewise, the purpose and need section of the EA for the Yuma ASH repeatedly relies on the anticipated traffic from the relocated POE as a justification for the Yuma Ash and the final proposed route terminates at the relocated POE. See Final EA at 1-7. The fact that the projects are undertaken by different federal agencies does not change this result, an EIS could easily be coordinated by Reclamation and FHWA. Indeed, both agencies have coordinated with many of the same local agencies for two projects, e.g., ADOT.

B3-18 | Because the environmental review for the Yuma ASH was improperly segmented from a larger, connected project the EA is inadequate on its face. FHWA's failure to properly consider all parts of this interdependent project in a coordinated EIS violates NEPA.

**5. The project will encourage widespread urban sprawl that the EA fails to adequately address.**

B3-19 | The project will facilitate urban sprawl, unplanned development in rural areas along the proposed route, rather than sustainable planned development within existing urban areas. This sprawl development will, in turn, cause secondary and cumulative impacts to the environment and public resources. For example, sprawl development that will inevitably follow the proposed route will destroy additional FHTL habitat and increase habitat fragmentation. Sprawl development will also impact other biological resources in the area by increasing noise and night lighting and limiting available open space. Unplanned urban sprawl development along the proposed route will also adversely impact the long-term viability of the BMGR. The EA fails to take seriously these impacts which are of local, regional, and national significance.

B3-21 | Urban sprawl development along the proposed route will also further degrade air and water quality and strain water resources in the area. None of these secondary and cumulative impacts of the project are adequately addressed in the EA.

**6. The analysis of impacts to air quality and other resources is inadequate.**

B3-22 | The Final EA's discussion of air quality impacts fails to identify direct, secondary, and cumulative effects of the project on air quality including the impacts to human health and biological resources. For example, the EA fails to discuss the impacts of deteriorating air quality on the rate of asthma or other respiratory diseases in the local or regional setting. The EA also fails to identify and analyze the impacts of deteriorating air quality and increased nitrogen deposition on biological resources locally and regionally. These are both issues of critical concern that should be identified and thoroughly analyzed in an EIS.

B3-23 | The EA discusses air quality only in terms of Clean Air Act standards and, even in those discussions, fails to acknowledge that the project will, in fact, deteriorate air quality in an already

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**Response to Comment B3-17 (cont'd)**

The construction of the new POE is an undertaking by a separate agency. The Bureau of Reclamation (Reclamation) completed an EA for the activities at the new POE and a Finding of No Significant Impact (FONSI) was issued in September 2000. In August 2005, Reclamation re-visited the FONSI and determined that it remained valid. The land required for the new POE was transferred on September 2, 2002, and the Yuma Area Port Authority now has jurisdiction over the land in question and has taken ownership of the process for the new POE.

The ASH serves specific purposes and needs, as documented in the *August 2005, FEA*, independent of the new POE. The ASH will still facilitate existing and future travel and movement of goods between the U.S./Mexico border crossing and I-8, remove commercial traffic and hazardous cargo from populated and congested areas, relieve existing and anticipated future congestion on US 95 through San Luis, Gadsden, Somerton, and the city of Yuma, and reduce the potential for increased traffic accidents in populated areas.

**Response to Comment B3-18**

Refer to Response to Comment B3-17. The new POE and the ASH are independent projects and do not rely on one another to function properly. An EA was completed in September 2000, for the POE. Refer to Section IV.Q. Secondary and Cumulative Effects of the *August 2005, FEA* for additional discussion.

**Response to Comment B3-19**

The *August 2005, FEA* (page 108) identifies that an indirect effect of the ASH will be the acceleration of planned development at the project's termini. Additionally, the ASH may alter land use patterns along the ASH corridor by

**Response to Comment B3-19 (cont'd)**

concentrating commercial land uses at the project's termini—where access points will be planned. However, it is important to note that while the ASH may accelerate development and influence land use patterns, ADOT and FHWA have no jurisdiction over zoning and land use/development planning, although ADOT and FHWA have been working closely with the local planning agencies so that any development impacts associated with the ASH will be planned.

According to the City of Yuma's, *Yuma General Plan 1983*, prior to the consideration for the ASH, the vicinity around Araby Road was planned for commercial use north of County 11th Street; south of County 11th Street and west of Araby Road was planned for residential development; and south of County 11th Street and east of Araby Road was planned for mixed density residential use.

The current 2002 *City of Yuma General Plan* indicates the plan for industrial land use along Araby Road north of County 11th Street; commercial and mixed use areas around the intersection of County 11th Street; and areas of residential use extending south, east, and west of the mixed use lands. The 2002 *City of Yuma General Plan* also indicates some areas for public/quasi-public\* lands and some additional residential outlying areas consisting of suburban and rural uses.

For the 9 miles that the ASH will be located within the BMGR, the MCASY will have management responsibility. According to MCASY, building the ASH within the BMGR will not encourage private development along the road because the property is owned by the Federal Government and without any development or interchanges on the

\*- **Public/Quasi-Public:** publicly owned and operated facilities or those devoted to public use by governmental and quasi-public or non-profit entities; includes schools, churches, hospitals, military installations, government buildings, etc. – (2002 *City of Yuma General Plan*)



**Response to Comment B3-19 (cont'd)**

portion of land within the BMGR. If the alternative route, which is outside the BMGR and somewhere within the 2½ miles separating the BMGR from MCASY were used, incompatible encroachment will occur. The alternative will also encourage development under the only remaining overflight pattern for MCASY. Presently the Joint Land Use Plan provides protection to MCASY from incompatible development within this area. If the ASH is built through this area instead of on the BMGR, then pressure to build adjacent to the route will occur. MCASY is not the controlling authority for this land; however, MCASY is the controlling authority for land within the BMGR. If encroachment happens in this alternate route area, it will negatively impact on the mission of MCASY.

According to representatives from MCASY there will be *less* cumulative development and resultant encroachment by locating the ASH *within* the BMGR than by locating it on an alignment near—but *outside*—the BMGR. The relevant military inputs reflected in this conclusion about potential encroachment by development have been part of the planning process for the ASH from its earliest conceptions.

**Response to Comment B3-20**

Refer to Response to Comments B3-3 and B3-5.

As stated in the *August 2005, FEA*, “MCASY has also stated a preference for the ASH to be located inside the BMGR so that unwanted encroachment by commercial and residential development adjacent to the roadway can be prevented. There will be no access to the ASH from within the BMGR.” According to representatives from MCASY there will be *less* cumulative development and resultant encroachment by locating the ASH *within* the BMGR than by locating it on an alignment near—but *outside*—the BMGR.

**Response to Comment B3-21**

FHWA considered foreseeable growth in cumulative impacts, as provided in Section IV. Q. Secondary and Cumulative Effects of the *August 2005, FEA*.

ADOT/FHWA does not have the authority to regulate adjacent land uses and development.

**Response to Comment B3-22**

Nitrogen deposited from the atmosphere originates primarily from two kinds of human activities—the combustion of fossil fuels and agriculture. Combustion of fossil fuels such as petroleum and coal generates emissions that form nitrogen oxides ( $\text{NO}_x$ ) in the atmosphere and is the major contributor to nitrogen deposition. Agricultural releases of nitrogen are primarily in the form of ammonia ( $\text{NH}_3$ ) from fertilizer manufacturing and livestock production activities, but also as organic nitrogen from nitrogen-fixation processes in the cultivation of legumes and other crops.

This project will not lead to an increase in farm or agricultural activities and is intended to redistribute the existing and projected vehicular composition and, therefore, should not increase vehicle emissions. In fact, relieving existing and projected vehicle congestion will reduce the amount of car/truck idling and therefore reduce vehicle emissions.

**Response to Comment B3-23**

Air quality impacts of emissions of  $\text{NO}_x$  are not assessed as project-level impacts because these emissions are intermediary gases which must combine with sunlight and other compounds to produce pollutants that are deleterious, such as ozone. The effects, if any, of these emissions, chemical precursors of ozone, are experienced regionally and are dependent on the presence of other, nonproject factors.

**Response to Comment B3-23 (cont'd)**

The 1990 Clean Air Act Amendments (CAAA) require that air quality impacts be addressed in the preparation of environmental documents. As required by CAAA, the US Environmental Protection Agency (EPA) set National Ambient Air Quality Standards (NAAQS) for six criteria pollutants and identified nonattainment areas (areas which exceeded the NAAQS) for given pollutants. The ASH is not in a nonattainment area for ozone.

While construction and operation of the ASH will increase area particulate matter (PM<sub>10</sub>) concentrations, EPA has not yet developed procedures for analyzing project-level particulate pollution impacts. Section IV. G. Air Quality, of the *August 2005, FEA*, discusses why the project will not be in violation of the Clean Air Act:

The ASH falls within the Yuma PM<sub>10</sub> Nonattainment area. In response to the requirements of the Federal Intermodal Surface Transportation Efficiency Act (ISTEA), the Yuma PM<sub>10</sub> Nonattainment Area State Implementation Plan (SIP) was prepared in 1991 and revised in 1994. The SIP's primary purpose is to eliminate or reduce the severity of the violations of the NAAQS and expeditiously attain such standards. The 2000 Air Quality Conformity Analysis (for the Yuma PM<sub>10</sub> Nonattainment Area), approved by FHWA and the Federal Transit Administration on January 23, 2001, demonstrated that the adopted 2001-2005 Transportation Improvement Plan (TIP) and 2000-2023 Countywide Transportation Plan (CTP) (approved November 30, 2000) conform to the SIP.

The ASH was included in the conforming TIP and CTP and is also included in the 2001-2003 State Transportation Improvement Program (STIP). The ASH is a conforming project, signifying that it does not contribute to any new PM<sub>10</sub> violations, increase the frequency or severity of PM<sub>10</sub>

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severely impacted air basin. The EA's repeated assertion that because the ASH was included in the conforming TIP and CTP, and is a "conforming project," it does not contribute to any *new* air quality violations for PM 10 misses the point of environmental review entirely. *See* Final EA at 75, 110. The ASH is within a non-attainment area for PM 10 and thus, any contribution of PM 10 will, by definition, contribute to the ongoing air quality violation – a significant effect. Further, any additional deterioration of air quality in a non-attainment area is also a significant effect. The fact that construction of the ASH was considered in preparing the TIP or CTP does not change that result. Similarly, the EA's discussion of CO fails to identify the fact that the ASH will *contribute* to CO concentration levels as a significant effect of the project. The FHWA cannot escape this conclusion simply because the project's contribution might not independently trigger a new Clean Air Act violation. *See* Final EA at 74-75.

B3-25

The EA's discussions of effects on noise, visual resources, water resources, and water quality fare no better. Because the EA is inadequate under NEPA, FHWA cannot properly rely on it to approve the proposed project.

**III. The FHWA Violated Section 4(f) of the Transportation Act of 1966 By Failing to Provide Adequate Analysis of the Projects Effects on Publicly Owned Lands Managed for Wildlife Conservation.**

Pursuant to the Section 4(f) of the Transportation Act of 1966 (now codified at 49 U.S.C. § 303(c)), the FHWA must evaluate the impacts of highway projects on public lands that are managed for wildlife preservation. As the statute states:

(c) The Secretary may approve a transportation program or project requiring the use (other than any project for a park road or parkway under section 204 of title 23) of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) *only if—*

- (1) there is no prudent and feasible alternative to using that land; and
- (2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

B3-26

49 U.S.C. § 303(c) (emphasis added) (formerly codified as 49 U.S.C. § 1653(f) or "4(f)"). Because the proposed Yuma ASH will use lands set aside to preserve wildlife in the Flat-tailed Horned Lizard Management Area, FHWA was required to examine all reasonable and prudent alternatives to using that land and to engage in planning that would minimize the harm to the FTHL Management Area from the use. Unfortunately, the FHWA completely ignored the impacts to the FTHL Management Area in its Section 4(f) Evaluation, in violation of the law.

**Response to Comment B3-23 (cont'd)**

violations, and will not delay attainment of the PM<sub>10</sub> standard.

In addition, Mobile Source Air Toxics have been analyzed and additional text is attached.

**Response to Comment B3-24**

The ASH was included in the conforming TIP and the CTP and is also included in the STIP. The ASH is a conforming project, signifying that it does not contribute to any new PM<sub>10</sub> violations, increase the frequency or severity of PM<sub>10</sub> violations, and will not delay attainment of the PM<sub>10</sub> standard.

**Response to Comment B3-25**

It is FHWA's opinion that the *August 2005, FEA* properly analyzes the effects on noise, visual resources, water resources, and water quality. Please refer to Section IV. Affected Environment, Environmental Consequences, and Mitigation Measures of the *August 2005, FEA*.

**Response to Comment B3-26**

The Center for Biological Diversity and the Yuma Audubon Society contend that the FTHL Management Area (MA) is a wildlife refuge of local, regional, or national significance. Therefore, the MA would be subject to Section 4(f) of the Department of Transportation Act in which the taking of land from a wildlife or waterfowl refuge of nation, state, or local significance may be approved only if there is no prudent and feasible alternative to using that land and the program or project includes all possible planning to minimize harm to the refuge.

**B3**

**A. The Flat-Tailed Horned Lizard Management Area is a Wildlife Refuge of Local, Regional, and National Significance.**

The Yuma Desert Flat-tailed Horned Lizard Management Area is a wildlife refuge of local, regional, and national significance. It is one of five management areas on public lands set aside to preserve the FTHL population pursuant to the 1997 Flat-tailed Horned Lizard Conservation Agreement between nine state and federal agencies, and it is the only Flat-tailed Horned Lizard Management Area in Arizona. Signatories to the Conservation Agreement include the U.S. Fish and Wildlife Service and the agencies that own or have jurisdiction over the lands included in the Flat-tailed Horned Lizard Management Areas including, as relevant here, the U.S. Marine Corps, BLM, Reclamation, the U.S. Navy, and the Arizona Game and Fish Department. Each of the signatory agencies has agreed to work towards preservation of the FTHL. For example, the Yuma Desert FTHL Management Areas is included in the land use plan for the BMGR. Much of the FTHL habitat that will be lost if the project is built along the proposed route, has been managed as part of the Yuma Desert Flat-tailed Horned Lizard Management Area for many years.

The FHWA's own regulations provide that where federal lands or other public lands are administered for multiple uses Section 4(f) "applies to those portions of such lands which function for, or are designated in the plans of the administering agency as being for, significant park, recreation or wildlife and waterfowl purposes." 23 C.F.R. §771.135(d). The FHWA's 2005 policy paper provides guidance and examples of properties that function as wildlife refuges including "State or Federal wildlife management areas." FHWA's Section 4(f) Policy Paper (March 1, 2005) at 23. Here, the Yuma Desert Flat-tailed Horned Lizard Management Area was designated as one of five special management areas for the species and this use has been incorporated into the land management plans for all of the agencies that own or control the land. Thus, Section 4(f) applies to the Yuma Desert Flat-tailed Horned Lizard Management Area.

**B. The EA Fails to Avoid or Minimize Impacts to the Flat-Tailed Horned Lizard Management Area.**

The final EA erroneously states that there are "no publicly owned parks, recreation areas, or wildlife and waterfowl refuges of national, state, or local significance within the project area." Final EA at 64. The Final EA and Section 4(f) Evaluation provides no Section 4(f) evaluation of the project's impacts to the FTHL Management Area and fails to make the required findings to proceed with this project. FHWA cannot approve this project as proposed because it cannot find that "there is no prudent and feasible alternative to using that land" or that the "project includes all possible planning to minimize harm to" the FTHL management area "resulting from the use." 49 U.S.C. § 303(c). The inadequacies of the Section 4(f) Evaluation for the project include, but are not limited to: failure to properly identify and analyze impacts to lands set aside as a wildlife refuge; failure to examine prudent and feasible alternatives to using the FTHL Management Area and BMGR for the proposed project; failure to choose a prudent and feasible alternative that would avoid impacts to the FTHL Management Area; and failure to use all possible planning to minimize harm to the FTHL Management Area and BMGR resulting from the use.

**Response to Comment B3-26 (cont'd)**

Two separate points must be established in the discussion: the ASH is not within the MA and the MA is not a Section 4(f) resource. The 2003 FTHL Rangewide Management Strategy states in Planning Action 1.1, "if the proposed Area Service Highway is constructed along a portion of the boundary of the MA, the east and south side of the right-of-way will be the new western and northern boundary of the MA, as appropriate." In addition, Planning Action 2.2.4 states, "the proposed Area Service Highway and its right-of-way are outside the Yuma Desert MA." Land used for the MA begins at the boundary of the ASH from initial planning of the MA and therefore the ASH is not within the boundary of the MA.

In addition, publicly owned land is considered to be a wildlife refuge when the land has been officially designated as such by a Federal, State, or local agency and officials of these governmental entities, having jurisdiction over the land, determined that the major purpose and function is for a refuge. Incidental, secondary, occasional or dispersed refuge activities do not constitute a major purpose. In this case, the primary purpose of the land that is contained in the MA is not for refuge purposes. The MA was established on lands that have already been designated for multiple uses besides being a management area for the FTHL. The MA is on federally owned lands of the Bureau of Reclamation and the US Department of the Navy, which maintain previous land use designations as the primary purpose and function for the land.

## B3

The FHWA's failure to address the impacts to the Management Area and the BMGR in the Section 4(f) Evaluation violates the statute.

#### IV. Conclusion.

As detailed above, FHWA has failed to comply with NEPA. The EA prepared for the Yuma ASH is fatally flawed because it fails to acknowledge the obvious—building a new limited access highway in a rural area through habitat set aside for an imperiled species and military uses will have significant effects on the environment. Because the project will have significant effects on the environment FHWA violated NEPA by failing to prepare an EIS. The EA which FHWA seeks to rely on in lieu of an EIS cannot save FHWA from its NEPA violations because the EA provides inadequate information and analysis about the effects of the proposed project on the environment and fails to analyze a reasonable range of alternatives. The Center urges FHWA and its local co-sponsors ADOT and YMPO to prepare a legally adequate EIS for the proposed project and engage in meaningful examination of alternatives that will avoid or minimize impacts to the Flat-tailed Horned Lizard and its habitat.

If FHWA wishes to go forward with the proposed ASH, the Center looks forward to reviewing an EIS for the proposed action. Thank you for your time and consideration of the Center's views on these issues of local, regional, and national importance. Please do not hesitate to contact me if you have any questions or wish to discuss these issues further.

Sincerely,

/s/

Lisa Belenky  
Center for Biological Diversity

#### CC:

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**YUMA AUDUBON SOCIETY**  
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**YUMA, ARIZONA 85366-6395**

October 7, 2005

Melissa Maiefski  
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 Arizona Department of Transportation  
 1221 South 2<sup>nd</sup> Avenue, Mail Drop T100  
 Tucson, AZ 85713-1602

Dear Ms. Maiefski:

The following are comments by the Yuma Audubon Society on the *Final Environmental Assessment for Yuma Area Service Highway, Yuma County, Arizona* (Federal Project HPP-900-A(022), TRACS No. 195 YU 0 H5774 01D). These comments incorporate by reference Yuma Audubon's earlier comments on the project as well as all comments submitted by the Center for Biological Diversity and Defenders of Wildlife.

As it currently stands, we hold that this Final Environmental Assessment (hereinafter referred to as the "YASH FEA" or "the FEA") is an insufficient document under the National Environmental Policy Act and related regulations and cannot be used as a basis for a decision to proceed with this project. We will demonstrate the insufficiency of the document in the sections below.

#### **The FEA Fails to Demonstrate a Purpose and Need for the Proposed Action**

According to the FEA (p. 8), there are four purposes for the Yuma Area Service Highway (YASH). The first of these is "facilitating existing and future travel and movement of goods between the U.S./Mexico border crossing and I-8." The third is "relieving existing and anticipated future congestion on US 95 through San Luis, Gadsden, Somerton, and the city of Yuma." In asserting these needs, the FEA uses a very selective and limited set of data. Other and more recent data lead to questioning whether a project as major and significant as the YASH is needed to fulfill the first and third stated purposes of the YASH.

The Yuma Metropolitan Planning Organization's (YMPO) graph of growth in average daily traffic for 1992 to 2004 (Yuma Metropolitan Planning Organization n.d.c:4) shows that since 2001, the rate of increase has decreased over that experienced from 1992-2001. Beyond that, while Yuma County may have experienced a



B4

population increase of 36% from 1990 to 2000, a period of ten years, increase in average daily traffic in Yuma County over the twelve-year period from 1992 to 2004 has lagged population growth, increasing only 23% (interpolating from the graph in YMPO n.d.c:4 with 1,175,000 for 1990 and 1,450,000 for 2004).

B4-1

The FEA claims that the YASH will divert traffic from US 95. However, quarterly 24-hour traffic counts at many points on US 95 shows that traffic has decreased from 2002 through 2004 (YMPO n.d.a, n.d.b, n.d.c), without the YASH. In Table 1 below, Sites 36, 42, 43, 45, 46, 47, 49, 69, 72, 74, 95, and 96 occur along US 95 from San Luis to 16<sup>th</sup> Street and 4<sup>th</sup> Avenue in Yuma. Sites 38, 39A, 40, and 41 occur on either County 23<sup>rd</sup> east of San Luis or Avenue B between County 23<sup>rd</sup> and County 19<sup>th</sup>. Driving east from San Luis on County 23<sup>rd</sup> and then turning north on Avenue B at the state prison, joining US 95 at the Cocopah Casino (where US 95 becomes Avenue B into Yuma) is an alternate route for persons traveling from San Luis to Yuma.

**Table 1. Average 24-hour Traffic Counts**

Site	Average 24-hour traffic count	2002	2003	2004
36 U.S. 95 S. of Co. 14th St.		11121	3432	9812
38 Ave. B N. of Co. 16th St.		7321	6979	6251
39A Avenue B N. of County 19th. St.		6847	7203	6818
40 Ave. B S. of Co. 19th St.		7385	8366	7794
41 Co. 23rd St. W. of Avenue B		7851	7622	7162
42 U.S. 95 N. of US Border (San Luis)		18037	18463	18484
43 U.S. 95 N. of Piceno Road		10754	11925	12927
45 U.S. 95 N. of Co. 19th St.		7474	7806	9647
46 U.S. 95 W. of Ave G		6078	5771	5430
47 U.S. 95 E. of Ave. G		5392	4548	6213
49 U.S. 95 E. of Somerton Ave.		9845	10223	9709
69 Ave. B S. of 20th St.		21205	22600	21493
72 Ave. B N. of 32nd St.		15291	16220	16404
74 Ave. B S. of 32nd St.		11291	11617	10502
95 16th St. E. of 4th Ave.		30103	32485	29425
96 16th St. W. of 4th Ave.		32246	32019	30664

Source: Yuma Metropolitan Planning Organization n.d.a, n.d.b, n.d.c

Note that in 2003, seven of the sixteen sites in Table 1 registered a lower daily average traffic count than in 2002 (figures in red in 2003 column), and in 2004, ten of the sixteen sites had lower average daily traffic counts than in 2003 (figures in red in 2004 column). One other site, U.S. 95 south of County 14<sup>th</sup>, had a lower count in 2004 than in 2002 (figure in violet). Indeed, half of the sites in Table 1 above registered lower average daily traffic counts in 2004 than in 2002. This suggests that rather than needing the regional approach to traffic advocated by the FEA (e.g., "Response to Comment B4-12," p. G-B-41) traffic increases are limited to specific

B4-1  
(cont'd)

### Response to Comment B4-1

By the year 2023, the existing local roadway network will be expected to maintain an estimated total traffic volume of 62,000 vehicles. This estimate is for north-south traffic movement, directly north of County 23rd Street, and is based on roadway classification type and number of through travel lanes. The capacity of the network for the year 2023 will be 49,120, creating a Level of Service (LOS) F. With the construction of the ASH the capacity for north-south movement will be 103,120, creating a LOS B.

The Yuma Metropolitan Planning Organization (YMPO) proposes an extension of Somerton Avenue to County 23rd Street to alleviate some of the capacity deficiencies. Although by the year 2023, with the extension of Somerton Avenue and without the construction of the Yuma Area Service Highway (ASH), the local network will still be at a LOS F for north-south movement. Therefore, modeling indicates deficiencies in the capacity for north-south movement in the local network if the ASH is not constructed.

A major portion of the existing truck traffic currently on US 95 will be diverted on to the ASH. The more relevant factor is the type of traffic being removed from US 95 as opposed to the direct number of vehicles. The ASH will divert truck traffic from conflict with personal vehicles in populated areas and provide an access-controlled corridor suitable for heavy commercial truck traffic, different then what currently exists in the local network. No improvements could be made to the existing network that would provide a similar access controlled facility. The ASH will be an access controlled divided highway providing higher speeds, no signalized intersections, and reduced travel time.

Allowing the commercial trucks to remain on the existing network creates an undesirable vehicle mix because of the higher percentage of trucks on the roadway. Commercial

B4

B4-1  
(cont'd)

areas along US 95 and need to be addressed on a more local basis. This also means that more detailed traffic count data do not support the need for a project of the magnitude of the YASH. It is only by presenting selective and minimal data in support of the "Purpose and Need" that the FEA attempts to create a spurious need for the proposed project.

The FEA and its predecessor Draft Environmental Assessment (DEA) cite estimates of commercial vehicles using the San Luis Port of Entry in 2015 and counts of trucks entering the United States from federal fiscal year 1997-1998 and (calendar year?) 1999 on an average daily basis from Mexico through the San Luis Port of Entry as a need for the YASH (FEA, p. 4, and Arizona Department of Transportation 2003:1). However, the FEA provides a count of trucks entering the United States from Mexico through San Luis for 1999, while the DEA uses data for federal fiscal year 1997-1998. Comparing the data in the FEA with the DEA, in 1999, 44,273 trucks crossed at San Luis, or "approximately 150 trucks per day, estimated on the basis of 300 trucking days per year." The DEA (Arizona Department of Transportation 2003:1) reports that 177,900 trucks entered the United States through San Luis for federal fiscal year 1997-1998, or "approximately 593 trucks per day, estimated on the basis of 300 trucking days per year." What the FEA does not show is the dramatic decrease in truck traffic from federal fiscal year 1997-1998 (about 593 trucks per day) to 1999 (about 150 trucks per day). Moreover, since 2000, the maquiladora industry has been in decline in Mexico, at least in part as a result of long-term structural factors such as jobs migrating to China and other lower-wage areas, the increase in the value of the Mexican peso, and less favorable tax treatment by the Mexican government (United States General Accounting Office 2003:23-24). The first three paragraphs of the "Project Need" section of the FEA (p. 4) are mostly about commercial or truck traffic through the San Luis Port of Entry. It seems obvious from this prominence given to truck traffic in the discussion that the proponents of the proposed action consider commercial traffic to be a major justification for the YASH. Yet that very justification has been declining rapidly. The FEA fails to analyze the effect of this decline in commercial traffic in relation to the need for the YASH.

The FEA also cites an estimate of 1500 commercial vehicles per day entering the United States from Mexico through the San Luis Port of Entry. However, in light of the more recent truck crossing data cited above, this estimate, which goes back at least as far as 1996 (YMPO Technical Advisory Committee Minutes of August 8, 1996, excerpted in the FEA at E-38) seriously needs to be reconsidered. It is no longer adequate as a justification for the YASH. Moreover, the validity of this estimate was questioned more than once at meetings of the YMPO or its Technical Advisory Committee. At the August 8, 1996 YMPO Technical Advisory Committee meeting it was admitted that 1500 trucks per day was a high estimate. At the September 12, 1996 YMPO Technical Advisory Committee meeting, a sub-consultant recommended using a figure of 1100 (FEA, p. E-40). The YMPO website (<http://www.ympo.org/ash.htm>) was still using a figure of 1200 trucks per day as of October 2, 2005 ("Commercial truck traffic at the border is expected to increase to 1200 trucks a day by the year 2015."). The rationale for the 1500 trucks per day

### Response to Comment B4-1 (cont'd)

trucks will create more idling vehicles at intersection traffic lights; impede traffic flow to commercial properties, and present greater opportunity for conflict with personal vehicles.

**B4**

B4-2 figure is explained as a projected 13% per year increase over a base figure of 200 trucks per day (YMPO Executive Board Meeting minutes of August 29, 1996, excerpted in the FEA at E-39). Since that meeting was in 1996, the base figure must have come from data from 1996 or before. The minutes reflect that the 13% growth rate was considered high and that its justification was that there had been higher annual growth rates. However, since 1996 we see that there has been a significant decline in truck traffic at the San Luis Port of Entry and there is no longer a justification for such a high estimate of annual growth in truck traffic. It is clear that the 1500 trucks per day estimate is no longer warranted for 2015, and this leads one to seriously question the need for a project of the magnitude of the YASH.

B4-2 What the FEA does is fail to estimate the effects of lower truck traffic on the need for the project and as a consequence fails to seriously examine, as full alternatives, projects of a lesser magnitude than the YASH.

As a result of the discussion above, we have seen how two of the four purposes of the YASH are not supported by data. The YASH might to a limited degree facilitate "existing and future travel and movement of goods between the U.S./Mexico border crossing and I-8," but in light of lower estimates and counts of traffic than claimed by the FEA, it has not been shown that a project of the magnitude of the YASH is needed. No other alternatives to the YASH, and using more detailed and current data, were carried through into full analysis. The *Yuma Area Service Highway Major Investment Study* of 1998, which the FEA proffers instead of full analysis of alternatives in the FEA, as required by the National Environmental Policy Act, uses data which are now out of date in light of recent decreases in vehicular traffic crossing the U.S.-Mexico border at San Luis and within Yuma County.

B4-3 The FEA fails to adequately analyze where people are going and where they come from when traveling between Yuma and San Luis. The YASH would connect to I-8 to the east of much of the population of Yuma, and will not directly serve Somerton or Gadsden. Much of the reason for travel to Yuma from San Luis is to work or shopping, most of which is located in the more heavily populated area to the west of the proposed route of the YASH. Thus, the amount of traffic that the YASH will divert from US 95 will be limited and it is questionable that such a major road is needed. The YASH would thus fail its third purpose of diverting significant traffic from US 95. The FEA asserts that people will use the road, but this has not even been investigated by a survey.

B4-4 The second purpose of the YASH (FEA, p. 8) is "removing commercial traffic and hazardous cargo from populated and congested areas." We have already shown above that it is questionable how much commercial traffic the YASH will carry (certainly not the admittedly overoptimistic estimate of 1500 trucks a day by 2015). Moreover, the area between I-8 and County 14<sup>th</sup> is rapidly developing residentially and commercially. The YASH would merely divert commercial traffic and hazardous cargo from a congested area to an area that will also be congested as development proceeds. Thus the YASH fails to meet its third purpose of removing commercial traffic and hazardous cargo. It merely moves it to someone else's backyard.

**Response to Comment B4-2**

Data received from US Customs and Border Protection for the San Luis Port of Entry (POE) indicates a reduction in commercial vehicles between 1996 and 2004. The data also indicate an increase of approximately 1,158,095 private vehicles and a relatively stable pedestrian count. The Greater Yuma Port Authority has indicated that several factors contribute to the reduction of commercial vehicles, such as the opening of a new POE at Calexico in November of 1996, the relocation of some Mexico factories to China beginning in 1998, the existing San Luis POE is at capacity and maintains one lane for commercial vehicles, the existing San Luis POE has no facilities for hazardous materials transportation, and the existing San Luis POE does not have updated technologies for security to accommodate faster service.

US Customs and Border Protection indicated that the existing San Luis POE extremely limited dock space, closure of Mexico factories, and additional stringent security measures since September 11, 2001, may also provide rationale for the decline in the truck traffic. US Customs and Border Protection also stated that the POE at Calexico is currently at capacity and is diverting some truck traffic to Arizona. Although the truck traffic volumes have fluctuated over the past three years, since 2002 the commercial traffic counts identify an increase. Even with a reduction of truck traffic, the ASH will meet the purpose and need documented in the *August 2005, Final Environmental Assessment* (FEA). The ASH will still facilitate existing and future travel and movement of goods between the U.S./Mexico border crossing and Interstate-8 (I-8), remove commercial traffic and hazardous cargo from populated and congested areas, relieve existing and anticipated future congestion on US 95 through San Luis, Gadsden, Somerton, and the city of Yuma, and reduce the potential for increased traffic accidents in populated areas.

**Response to Comment B4-3**

Refer to Response to Comment B4-1.

According to the most current YMPO *Regional Transportation Plan 2003-2026*, an extension of Somerton Avenue is planned by the year 2026. Even with the extension of Somerton Avenue and without the construction of the ASH, the local network will still be at a LOS F for north-south movement.

A major portion of the existing truck traffic currently on US 95 will be diverted on to the ASH. The more relevant factor to meet this roadway need is the type of traffic being removed from US 95 as opposed to the direct number of vehicles. The ASH will divert truck traffic from conflict with US 95.

In addition, generally driver surveys are not completed to project future travel patterns. When a travel route has exceeded its capacity and an alternate route to the same destination is available, it is assumed that traffic will redistribute to balance the travel times. The 1995 YMPO Transportation Model was completed, it is assumed that the model was calibrated with existing traffic counts.

The ASH will be a high speed, access controlled facility, it would be more attractive for driver to utilize this facility as opposed to a roadway such as US 95 that encompasses lower speed limit sections and traverse through local traffic with multiple traffic control points.

**Response to Comment B4-4**

The *August 2005, FEA* (page 108) identifies that an indirect effect of the ASH will be the acceleration of planned development at the project's termini. Additionally, the ASH may alter land use patterns along the ASH corridor by concentrating commercial land uses at the project's termini—where access points will be planned. However, it is important to note that while the ASH may accelerate

**Response to Comment B4-4 (cont'd)**

development and influence land use patterns, the Arizona Department of Transportation (ADOT) and Federal Highway Administration (FHWA) have no jurisdiction over zoning and land use/development planning. The local communities which do have jurisdiction, have shown support for the ASH. ADOT and FHWA have been working closely with the local planning agencies so that any known development associated with the ASH will be considered. In addition, the initial studies for the ASH were completed by YMPO. YMPO has been involved with this project from the beginning and supports the ASH.

According to the City of Yuma's, *Yuma General Plan 1983*, prior to the consideration for the ASH, the vicinity around Araby Road was planned for residential development; and south of County 11th Street and east of Araby Road was planned for mixed density residential use. The current 2002 *City of Yuma General Plan* indicates the plan for industrial land use along Araby Road north of County 11th Street; commercial and mixed use areas around the intersection of County 11th Street; and areas of residential use extending south, east, and west of the mixed use lands. The 2002 *City of Yuma General Plan* also indicates some areas for public/quasi-public\* lands and some additional residential outlying areas consisting of suburban and rural uses. The comparison between the 1983 and 2002 *City of Yuma General Plan* for the City of Yuma indicates a lower planned residential density along Araby Road than originally planned prior to the consideration of the ASH.

\*- **Public/Quasi-Public:** publicly owned and operated facilities or those devoted to public use by governmental and quasi-public or non-profit entities; includes schools, churches, hospitals, military installations, government buildings, etc. – (2002 *City of Yuma General Plan*)

B4

The fourth purpose of the YASH is “reducing the potential for increased traffic accidents in populated areas.” However, the FEA fails to seriously consider other alternatives, and thus the FEA makes assertions about the YASH (that it will reduce collisions on US 95) that could be achieved, and perhaps better and less expensively, by other alternatives. Rather than hope that the YASH will reduce collisions on US 95, the Arizona Department of Transportation (ADOT) and YMPO should be investigating what it is about US 95 that causes it to have a higher collision rate (2.020) than four lane urban state routes collectively (1.865), and whether this difference is statistically significant and consistent over time. In addition, is the collision rate of 2.020 per million vehicle miles for the segment of US 95 between San Luis and Yuma, or for the whole of US 95 in Arizona? The FEA fails to investigate all this in asserting that the YASH will reduce collision rates on another road (US 95). The analysis is simply inadequate. Given that divided roads tend to have lower collision rates (e.g., the FEA gives 1.070 collisions per million vehicle miles for four lane divided urban routes), we suggest that a four lane *divided* US 95, had ADOT and YMPO chosen to do so, would have reduced and could still reduce the collision rate on US 95 to something more in line with the 1.070 for four lane divided urban state routes, and more than the YASH will reduce the collision rate. It is dubious at best that the YASH will fulfill its fourth stated purpose of reducing traffic accidents in populated areas, in particular collisions. Other, less expensive and more directly effective, alternatives should be examined to fulfill this purpose or the FEA fails in its purpose. The FEA gives the impression that the purpose and need was developed for the proposed project, rather than the proposed project being developed to meet the four stated purposes. A lack of serious and full consideration of alternatives in the EA only adds to this.

B4-5

B4-6

**The FEA Ignores Significant Effects of the Proposed Action**

In its decision not to prepare an environmental impact statement (EIS), the project proponents, including the Federal Highway Administration (FHWA), contend that even though the project is both “A new controlled access freeway” and “A highway project of four or more lanes on a new location” and thus under 23 CFR 771.115(a)(1-2) normally would require preparation of an EIS, that the proposed project is not normal because it is not a significant action.

However, the FEA fails to discuss significance (or insignificance) of the proposed action. The term “significant” appears only 13 times in the FEA, “significance” 6 times, and “insignificant” and “insignificance” don’t appear at all. The FEA (p. 1) does say that there is “a *likelihood* [my emphasis] of no significant impact from the ASH.” A likelihood of no significant impact is hardly a confident statement of no significant impact. How much of a likelihood? This issue is not addressed in the FEA. Given that there is only an unquantified *likelihood* of no significant impact, the prudent decision would have been to do an EIS.

B4-7

B4-8

The FEA does include some examples of significant effects of the proposed action, however. On page 61, there is discussion of cultural resources which includes this statement: “To be listed in the NRHP [National Register of Historic Places], a

**Response to Comment B4-4 (cont’d)**

In addition, the local jurisdictions are currently approving development plans consistent with the plan to limit direct access to the ASH. Therefore, the ASH will not ‘move it to someone else’s backyard’ because the ASH will not be an access controlled roadway developing in an urban area, instead the urban areas are developing around an access controlled facility.

**Response to Comment B4-5**

The collision rate provided in the *August 2005, FEA* was the collision rate for the segment of US 95 between the International Border and the traffic interchange with I-8 and not for the entire US 95 roadway within Arizona. Refer to the Design Concept Report for additional information regarding the collision rate.

**Response to Comment B4-6**

The ASH will be the only route that could provide an access controlled divided alignment from the port of entry to I-8, without going through urbanized areas. The ASH will provide an access-controlled facility, different then what currently exists in the local network. The ASH will provide a corridor suitable for commercial vehicles that will remove commercial through-traffic from populated areas. No improvements could be made to the existing network that would provide a similar access-controlled facility. The ASH will be an access-controlled divided highway providing higher speeds, no signalized intersections, and reduced travel time.

US 95 can have improvements added such as a raised median, median barrier, and/or access control. These measures will likely improve the traffic movement conflicts on US 95, however they will not address the additional capacity needed in the Regional Transportation Area, nor will they improve the mix of passenger vehicle and truck

**Response to Comment B4-6 (cont'd)**

traffic. Also, the access control of the existing urbanized areas will have impacts to existing and future development.

**Response to Comment B4-7**

An Environmental Assessment (EA) is prepared by the applicant in consultation with the Administration for each action that is not a categorical exclusion (CE) and does not clearly require the preparation of an Environmental Impact Statement (EIS), or where the Administration believes an EA would assist in determining the need for an EIS.

When the significance of impacts of a transportation project proposal is uncertain, an [EA] is prepared to assist in making this determination. (40 CFR [Code of Federal Regulations] 1508.9)

And preparation of an EIS when the proposed action will have a significant impact on the environment.

A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment.

FHWA does not believe there is a legitimate basis for preparing an EIS.

The term "likelihood" that was used in the text on page 1 of the *August 2005, FEA* was misinterpreted. Typically, a Draft Environmental Assessment (DEA) will use non-determining language to ensure there is no misunderstanding by the public that a decision has been made prior to the issuance of a Finding of No Significant Impact (FONSI). Since the *August 2005, FEA* was also released for review by the public, the term "likelihood" was included in the text to show that a final determination had not yet been made, because a FONSI has not yet been issued. The FHWA does not believe there are significant impacts from the ASH and, furthermore, an EIS is not warranted.

B4

B4-8  
(cont'd)

property or district must be demonstrably *significant* [my emphasis] under at least one of four criteria . . . .” A cultural resources survey identified three sites eligible for the NRHP in the proposed project area. This is significant.

B4-9

On page 94, the FEA notes that the proposed project “would impact a *significant* [my emphasis] portion of Parcel 2.” This is Flat-tailed Horned Lizard (FTHL) habitat which would be affected. Once again, significance is admitted. On page 112, the FEA states that “. . . construction of the ASH would create a *significant* [my emphasis] movement barrier for the FTHL.”

On page 100 of the FEA, there is discussion of Sand Food, which is a Highly Safeguarded species under the Arizona Native Plant Law. It is a Highly Safeguarded species because it one of a number of plant species which are “in jeopardy or which are in danger of extinction throughout all or a *significant* [my emphasis] portion of their ranges, and those native plants which are likely in the foreseeable future to become jeopardized or in danger of extinction throughout all or a *significant* [my emphasis] portion of their ranges.”

The project proponents will contend that they have reduced any significant impacts to insignificance. But as seen from the quote from page 1 of the FEA above, even they admit this is only a “likelihood” of no significant impacts. The discussion of significance of impacts in the FEA is inadequate. For example, one of the criteria of significance addressed by the Council on Environmental Quality, and which FHWA is subject to in NEPA compliance, is to consider beneficial impacts (40 CFR 1508.27(b)(1)). The FEA asserts beneficial impacts from the YASH in three instances. All appear on p. 109. The first is “The ASH would have a beneficial impact to land use on the BMGR by indirectly assisting in maintenance of the current military use.” The second is “Construction of the ASH would result in net beneficial moderate indirect impacts to the socioeconomic resources by potentially increasing the number of consumers moving through the greater Yuma area and shifting new and existing consumers west of the US 95 corridor.” The third is “The cumulative effects associated with the proposed POE, residential and commercial developments planned in proximity to the POE, and other past, present and foreseeable future actions would have a substantial, beneficial, cumulative impact on the economy in the region.” While we disagree with these conclusions, we must ask whether the project proponents contend that these “beneficial” impacts are insignificant? If they are significant, they are one of the criteria of significance requiring preparation of an EIS. If they are insignificant, why build the road at all? Moreover, the FEA “Response to Comment B4-39” on p. G-B-53 only discusses adverse impacts and not beneficial impacts and thus fails to respond to the comment which admonished the project proponents that the significance of beneficial impacts must be discussed under 40 CFR 1508.27(b)(1).

B4-10

B4-11

In my comments on the DEA (FEA, pp. G-B-54-G-B-58), just as above, the responses by the project proponents fail to adequately respond to the issues of significance that were raised. For example, in my comment B4-41 on p. G-B-54 of the FEA, the Response to Comment B4-41 is a discussion of recreational purposes.

### Response to Comment B4-8

Although the word “significant” is used in the *August 2005, FEA*, the use of this word does not intend to imply a significant impact to the human environment as a result of the ASH simply through the use of the word alone. When speaking of cultural resources, the word significant was used in the context of Section 106 of the National Historic Preservation Act of 1966, which outlines how to determine if a property is eligible for listing on the National Register of Historic Places. The text explains that a site must be considered “significant” within the context of Section 106 to be eligible for listing on the National Register of Historic Places. Simply having sites significant enough to warrant listing does not equate to a significant impact to these resources as a result of the project. Similarly, the use of the word “significant” in the context of the native plants discussion is also rooted in the use of the word within regulations. The word “significant” was used to explain the definition of a highly safeguarded plant under the Arizona Native Plant Law and was not used in the context of impacts to native plants as a result of the ASH. Again, the use of the word significant on page 94 of the *August 2005, FEA* was used to explain that agricultural and urban development can impact the flat-tailed horned lizard (FTHL) habitat within 0.25 miles of its boundaries, and the combination of land use and this boundary impact has a significant impact on the quality of habitat within Parcel 2. This does not equate to a significant impact from the ASH. FHWA has determined that there are no significant impacts to these resources as a result of the ASH.

### Response to Comment B4-9

The use of the word significant in this instance was misunderstood. The ASH will present a barrier to FTHL movements from the Yuma Desert Management Area (MA)



**Response to Comment B4-9 (cont'd)**

to unprotected land west of the ASH. However, this does not pose a significant impact to the FTHL and will only restrict access to 0.35 percent of the suitable FTHL habitat in the United States (including the ASH alignment acreage). Considering 29 percent of the home range for the FTHL is located in Mexico, the percent of restricted habitat would decrease even further if compared to the total suitable habitat available for the FTHL in both countries.

Furthermore, the habitat lost in Arizona from fragmentation will be mitigated through the protection of replacement FTHL habitat in California, where more suitable FTHL habitat is in jeopardy of development than in the Yuma, Arizona, area. This approach to habitat compensation was approved by the Marine Corps Air Station Yuma (MCASY), Bureau of Reclamation (Reclamation), BLM, YMPO, US Fish and Wildlife Service (USFWS), and the Arizona Game and Fish Department in January-March 2005, as indicated in the letters on pages A-139 through A-146 of the *August 2005, FEA*. Therefore, while the ASH will be a barrier to FTHL movements to unprotected habitat on the western side of the alignment, the impact to the FTHL is not significant and the loss of habitat will be mitigated.

**Response to Comment B4-10**

The National Environmental Policy Act (NEPA) and related supporting regulations require that an EIS be prepared and approved when a proposed Federal action (e.g., the authorization for the use of Federal-aid Highway Program funds to construct a highway improvement) would cause *significant* impacts. The completed studies, evaluations, and public outreach conducted by ADOT have not identified impacts resulting from the improvements that are clearly *significant*. While there are virtually no improvements without some adverse effects, the efforts ADOT has

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B4-11  
(cont'd)

Yet recreational purposes were not part of my comment B4-41 and the question of whether the project proponents assert that removing "commercial traffic and hazardous cargo from populated and congested areas" is a significant beneficial impact is unaddressed.

The Response to Comment B4-42 on p. G-B-54 of the FEA also fails to address the significance of the cultural resources, prime farmlands, and ecologically critical areas which 40 CFR 1508.27(b)(3) uses as one of the measures of significance of an action.

The Response to Comment B4-43 on p. G-B-54 of the FEA belittles the significance of the participation of persons opposed to the proposed project. We may also recall that earlier on in the history of the YASH proposal, there was controversy from farmers and irrigation districts who were opposed to the proposed routes presented in 1989 (Vaughn 1989:1, 15). To claim that there was no significant controversy over the YASH is preposterous.

B4-12

My Comment B4-44 on p. G-B-54 of the FEA addresses the fifth criterion of significance under NEPA (40 CFR 1508.27(b)(5), which is "uncertain" effects and "unique or unknown risks." The project proponents assert in Response to Comment B4-44 that they have consulted with the U.S. Fish & Wildlife Service and the Arizona Department of Game & Fish and developed mitigation procedures for the proposed action. But uncertainty and unique or unknown risks remain regardless of the mitigation. The size of current habitat for the FTHL in Arizona is not accurately known and possibly ranges from 135,900 to 176,000 acres (Flat-tailed Horned Lizard Interagency Coordinating Committee [FTHLICC] 2003:1). This is uncertainty. An accurate estimate of the population of FTHL in the Yuma Desert Management Area and throughout its range is neither available nor possible at this time (FTHLICC 2003:Executive Summary). This is uncertainty. A minimum viable population for FTHL cannot be established for the five FTHL Management Areas (MAs) because "population demographics and stochasticity in possible reserves (MAs) are not adequately understood to provide this information (FTHLICC 2003:11). This is uncertainty. The FTHLICC further states (2003:11) that "Each of the MAs is *believed* [my emphasis] to contain viable FTHL populations." This further reflects the uncertainty of the status of the FTHL, one of the criteria of significance under NEPA. Once again, the project proponents have provided descriptions of what they did rather than address the issue of significance.

B4-13

Another uncertainty factor is whether relocated FTHL would survive. There is no analysis of this in the FEA. FTHL will be transferred into habitat that is most likely already occupied by other FTHL. What is the effect of increasing the density of the population in this way? Will there be enough food available? Shelter? How are ants distributed in the area of concern? All this and more needs to be analyzed in order to determine whether transplanted FTHL will survive. If they don't survive, mitigation has been ineffective. This uncertainty adds to the significance of the proposed action

**Response to Comment B4-10 (cont'd)**

undertaken to identify possible adverse effects have afforded substantial public input and involvement, considered a reasonable range of alternatives, evaluated the impacts in terms of context and intensity, and provided reasonable plans to mitigate and minimize any adverse impacts. FHWA does not believe there is a legitimate basis for requesting ADOT to prepare an EIS.

The case referenced indicates that significant beneficial impacts alone would not warrant an EIS, but if there are other non-beneficial significant impacts in an EIS, beneficial impacts must be disclosed as well. Beneficial impacts to environmental resources are discussed in the *August 2005, FEA*, where appropriate.

**Response to Comment B4-11**

The completed studies, evaluations, and public outreach conducted by ADOT and FHWA have not identified impacts resulting from the improvements that are *significant*. While there are virtually no improvements without some adverse effects, the efforts ADOT and FHWA have undertaken to identify possible adverse effects have afforded substantial public input and involvement, considered a reasonable range of alternatives, evaluated the impacts in terms of context and intensity, and provided reasonable plans to mitigate and minimize any adverse impacts. FHWA does not believe there is a legitimate basis for preparing an EIS.

**Response to Comment B4-12**

While certain factors related to the biology, ecology, and management of the FTHL are not known absolutely, sufficient information is available upon which to base decisions for environmental planning. In considering secondary and cumulative impacts, the most current estimate of current FTHL habitat remaining in Arizona (158,844 acres) is used to analyze project impacts. While

B4	
B4-13 (cont'd)	and further supports the requirement to prepare an EIS where significant impacts may occur.
B4-14	There is, in fact, a lot of uncertainty over just what the proposed mitigation is, comparing Appendix D with the text of the FEA proper (e.g., pp. 89-99). Some actions are mentioned in one place but not the other. And there is yet another section on mitigation before the main text of the FEA (pp. ix-xxxiii). This only adds to confusion and the uncertainty of the effects of the proposed action.
B4-15	The Response to Comment B-46 (FEA, p. G-B-48) and discussion of cumulative impacts to the FTHL (FEA, p. 119-120) fails to consider as significant the impact of the proposed action in declaring FTHL in parcels of land west and north of the YASH as nonviable. If the YASH were to be located farther to the west, it would not result in these parcels becoming nonviable for FTHL. Creating nonviable populations of FTHL is a significant cumulative impact, as provided under 40 CFR 1508.27(b)(7). Similarly, dooming FTHL to nonviability is a significant effect under the eighth criterion of significance at 40 CFR 1508.27(b)(8), which is loss or destruction of scientific, cultural, or historic resources. Note that in the DEA, the parcels that are now slated for nonviable populations of FTHL were intended to continue to be viable because in the DEA these populations were going to receive a different form of mitigation (culverts under the YASH). The FEA also fails to analyze cumulative effects on the FTHL of illegal cross-border traffic and Border Patrol operations in the Yuma Desert MA and other FTHL habitat. Yet another cumulative effect that is unanalyzed is the operation of Reclamation's sludge disposal area in FTHL habitat and projected expansion of the area from 160 to 960 acres.
B4-17	However, the FEA (p. 87) states that "Major threats to the species [FTHL] include . . . roadway construction and use." How can the project proponents maintain that there are no significant impacts on the FTHL in light of this statement? "Roadway construction and use," which is the heart of this project, is, in the proponents own words, a "major threat." At p. 93 of the FEA, it is stated that the YASH and paving of Avenue E will not affect the viability of the FTHL in Parcel 1. How can this be? It cuts off the last corridor available to FTHL traveling between the Yuma Desert MA and Parcel 1. The FEA also fails to note that parts of Parcel 1 are returning to desert because they are not being used for growing crops. The measured area of Parcel 1 is also not given. All of this shows an inadequate analysis of effects of the YASH on FTHL in Parcel 1.
B4-18	
B4-19	The FEA also fails to adequately analyze the encroachment effects of locating the YASH on the Barry M. Goldwater Range. The Fish & Wildlife Service feels that the proposed route of the YASH will stimulate growth affecting the FTHL (FEA, p. A-7) and will lead for demands for local access to the YASH (FEA, p. 103). Besides the effects mentioned in our comments on the DEA, what the FEA fails to recognize is that roads anywhere bring development. As development pressures build adjacent to the Goldwater Range, pressures will also build to remove some of the Goldwater Range from federal control and open it for private use. Locating the highway on the

### Response to Comment B4-12 (cont'd)

exact estimates of FTHL populations are not available, this information is not required to make informed decisions based on the tenets of conservation biology. In their study of FTHLs on the Barry M. Goldwater Range (BMGR), Young and Young (2000) concluded that "Density and abundance estimates over large areas were problematic and there appeared to be large swings in population size based on weather patterns. Because of these difficulties, a policy of habitat preservation rather than monitoring lizard numbers is recommended."

### Response to Comment B4-13

Although there may be some degree of uncertainty about the potential efficacy of the mitigation measures, the measures have been carefully considered, are based on evidence from scientific studies, and are reasonably designed to protect the FTHL. ADOT and FHWA have worked closely with the signatories of the FTHL Conservation Agreement to develop the mitigation plan for the ASH based on the best available scientific and commercial data. The plan has been reviewed by the species experts from multiple agencies and has received approval based on its comprehensive approach and scientific soundness.

Despite any impacts the ASH might have on individual FTHLs that are relocated, the risk of further harm to protected populations has been adequately addressed by the mitigation measures that will be implemented. As discussed in the Response to Comment B4-9, the mitigation measures will support the long-term viability of managed FTHL habitat and populations in the Yuma area, as well as in Management Areas in California.

**Response to Comment B4-14**

The discussion of impacts on the FTHL in Section IV. K. Threatened, Endangered, and Sensitive Species of the *August 2005, FEA*, contains several references to Appendix D, where additional information relating to FTHL mitigation can be found. Appendix D contains the entirety of the mitigation measures that will be implemented for the FTHL and details the mitigation measures that are summarized in the discussion on the FTHL provided in the body of the *August 2005, FEA*. These additional details (e.g., temperature ranges when FTHL removal surveys will be conducted, record-keeping requirements for FTHLs that are relocated) were not included in the body of the *August 2005, FEA* to keep the discussion of effects as clear and concise as possible. The mitigation measures that appear before the body of the *August 2005, FEA* outline which entity has responsibility for each of the measures, which is important information for the agencies reviewing the *August 2005, FEA*. All of the mitigation measures included in Appendix D appear in this section (Mitigation Measures), as well.

**Response to Comment B4-15**

As discussed on page 90 and pages 93–94, while ADOT and FHWA proposed to include culverted crossings in order to maintain population viability in Parcel 2, the FTHL Interagency Coordinating Committee (ICC) determined that the parcel will not be viable even if culvert crossings were provided because there are existing threats affecting the long term viability of this parcel. Indeed, as discussed on page 94 of the *August 2005, FEA*, the ICC, Reclamation, and MCASY determined that attempting to address existing threats and manage Parcel 2 for FTHLs was inappropriate, considering the extent of threats to FTHLs in Parcel 2. As a result, other mitigation actions that will have a greater benefit to long-term FTHL conservation have been included

**Response to Comment B4-15 (cont'd)**

in the mitigation plan. To address potential long-term impacts to FTHLs and their habitat within Parcel 2, ADOT will compensate for FTHL habitat lost to and fragmented by the ASH. For a complete discussion, see Section IV. K. Threatened, Endangered, and Sensitive Species of the *August 2005, FEA*.

**Response to Comment B4-16**

A discussion of the cumulative effects of cross-border traffic and Border Patrol operations on the FTHL and its habitat is provided in the *August 2005, FEA*, on page 119. The operation and projected expansion of Reclamation's salt sludge disposal area are included in the reasonably foreseeable future actions on page 114 of the *August 2005, FEA*, and the expansion of the salt sludge disposal facility and increased Border Patrol activity are identified in the discussion of cumulative effects on the FTHL on page 119. In addition to the analysis provided in the *August 2005, FEA*, it should be noted that the recent funding and ongoing construction of a high-speed vehicle barrier along the International Border is expected to result in a decrease in illegal and Border Patrol off-highway vehicle traffic in areas of high quality FTHL habitat, including in the Yuma Desert MA and the BMGR.

**Response to Comment B4-17**

While it is true that roadway construction and use have adversely affected FTHL populations, most roadways within the range of the FTHL do not have the kinds of protection that will be afforded through mitigation measures for the ASH. For example, a lizard barrier fence along portions of the ASH will provide long-term protection to FTHLs within the Yuma Desert MA. There is currently no lizard barrier

**Response to Comment B4-17 (cont'd)**

fencing along County 23rd Street (Juan Sanchez Boulevard); occupied FTHL habitat occurs on either side of this road, with the Yuma Desert MA immediately adjacent on the south side, and FTHLs in these areas currently receive no protection from traffic on the roadway.

In addition to lizard barrier fencing and other roadway design features (e.g., signs) that will protect adjacent FTHLs and their habitat from traffic on the roadway, various measures will be implemented during the construction of the ASH to reduce adverse impacts to FTHLs in the project area, including the use of biological monitors who will remove FTHLs from the project area prior to ground-disturbing activities. Worker awareness training will be required for construction and maintenance workers on the ASH. To address long-term impacts, FTHL habitat will be purchased with mitigation dollars to compensate for the eventual loss of adjacent habitat. Because project planning for the ASH has considered both short-term and long-term impacts and addressed these impacts with appropriate roadway design features and mitigation measures, the ASH is not expected to have the same adverse impacts as other roadways.

**Response to Comment B4-18**

Parcel 1 is approximately 2,291 acres in size. The determination that the ASH will not affect the viability of Parcel 1 was made by the FTHL ICC, as required in the FTHL Rangewide Management Strategy (RMS). This determination is discussed on page 93 of the *August 2005, FEA*. It is important to note that the ASH is not the only factor affecting the viability of adjacent parcels.

**Response to Comment B4-18 (cont'd)**

As discussed on page 91 of the *August 2005, FEA*, the ICC's assessment of viability is based on the size, configuration, and habitat condition of the isolated parcel; threats from adjacent lands; and existing scientific evidence of edge effects on the FTHL.

**Response to Comment B4-19**

As stated on page 49, of the *August 2005, FEA*, "MCASY has also stated a preference for the ASH to be located inside the BMGR so that unwanted encroachment by commercial and residential development adjacent to the roadway can be prevented. There will be no access to the ASH from within the BMGR."

Additionally, on page 51 of the *August 2005, FEA*:

MCASY is concerned that urban encroachment in the immediate vicinity of the BMGR may prevent it from continuing military operations in the future. Development in the surrounding area of the BMGR would restrict the current functions and limit the use of land. The ASH would not encourage future development because the roadway would be access controlled.

In a December 16, 2002 (Appendix A of the *August 2005, FEA*), memorandum from the Deputy Director of the Joint Law Center at MCASY to the MCASY Facilities Manager, the Deputy Director states, "development of the ASH will act as a buffer to further encroachment on the Barry M. Goldwater Range." An e-mail dated July 1, 2003 (Appendix A), from the MCASY Facilities Manager to the ADOT Project Manager acknowledges,

**Response to Comment B4-19 (cont'd)**

... [D]evelopment along the ASH from Araby Road south to the BMGR and from the BMGR west to Avenue E would more than likely occur on both sides of the ASH. This development does not encroach on aircraft operations performed within the BMGR or Marine Corps Air Station (MCAS) Yuma. MCAS does not object to development within these areas.

For the 9 miles that the ASH will be located within the BMGR, the MCASY will have management responsibility. The MCASY Facilities Manager e-mail communication of July 1, 2003, to the ADOT Project Manager continues,

Building the ASH within the BMGR would not encourage private development along the road because the property is owned by the Federal Government. This highway would be a high-speed expressway without any development or interchanges on the portion of land within the BMGR. If the alternative route which is outside the BMGR and somewhere within the 2½ miles separating the BMGR from MCAS were used, incompatible encroachment would occur. The alternative would also encourage development under the only remaining overflight pattern for MCAS. Presently the Joint Land Use Plan provides protection to MCAS from incompatible development within this area. If the ASH is built through this area instead of on the BMGR, then pressure ... to build adjacent to the route would occur. MCAS is not the controlling authority for this land; however, MCAS is the controlling authority for land within the BMGR. If encroachment happens in this alternate route area, it would negatively impact on the mission of MCAS.



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Goldwater Range sets a bad precedent, as people interested in development of the area will ask where else on the Goldwater Range there is land the military doesn't need because a highway has already been allowed across the Goldwater Range. This should be listed and analyzed as a reasonably foreseeable action on p. 114 of the FEA and elsewhere.

- B4-20 | On p. 79 of the FEA, some noise impacts will be unmitigated and those that are to be mitigated are left for later resolution. It is difficult to evaluate the effects of noise when the mitigation measures are unknown. All this adds up to a significant impact.
- B4-21 | On p. 100, we learn that impacts to the Cowles' Fringe-toed Lizard will not be mitigated, and mitigation for Sand Food is not yet determined. All of this increases the significance of the action and the level of uncertainty.
- B4-22 | The description of wildlife present in the area on pp. 81, 83 of the FEA is still inadequate. A small number of species are mentioned, but many have been left out. For example, although I pointed out in comments on the DEA that Mourning Doves are present in the area (FEA at G-B-62, Comment B4-66), this has still not been corrected. The impression is that the writers of the FEA really don't have much of an idea which animal species are present in the area and in what abundance, because neither a comprehensive survey was conducted nor were available databases consulted. This is in effect admitted in Response to Comment B4-66 in the FEA at G-B-62. The biological assessment of September 29, 1995 only looked for special status species and didn't survey the entire current proposed route.
- B4-23 | The FEA should also assess the impacts of the highway on the endangered California Brown Pelican. These pelicans wander north to the deserts of southwestern Arizona after both strong storms and the breeding period. They could wind up anywhere, including on the YASH.
- B4-24 | Given the significant effects that would result from the proposed action, we take vigorous exception to the egregious statement on p.p. 60-61 of the EA that "The new roadway would not result in the destruction or disruption of any man-made or natural resources, aesthetic values, community cohesion or a community's economic viability, or the availability of public and private facilities and services." This statement, among other discrepancies, totally ignores the significant effects on the FTHL in which populations will become nonviable if the highway is built in its proposed location.
- B4-25 | Because the project proponent has ignored the significance of the proposed action, and claims only "a *likelihood* [emphasis mine] of no significant impact from the ASH" (FEA, p. 1), it is clear that this is indeed a normal situation and under 23 CFR 771.115(a)(1-2) an EIS is required. We further claim, contrary to the project proponent, that 23 CFR 771.115(a)(1-2) envisions "A new controlled access highway" and "A highway project of four or more lanes on a new location" as examples of projects which, because of their magnitude and nature, are actions that significantly affect the environment, and thus require an EIS (40 CFR 1508.27).
- B4-26

**Response to Comment B4-19 (cont'd)**

According to representatives from MCASY there will be *less* cumulative development and resultant encroachment by locating the ASH *within* the BMGR than by locating it on an alignment near—but *outside*—the BMGR. The relevant military input reflected in this conclusion about potential encroachment by development has been part of the planning process for the ASH from its earliest conceptions.

**Response to Comment B4-20**

A final noise study is required to demonstrate final project conformity and will be assessed during final design. A final noise study will be completed during the final design of a project in order to have the most recent and relevant information at the time of bid advertisement to provide for appropriate mitigation measures.

During final design, if noise abatement measures are recommended, ADOT will meet with each property owner whose site meets the criteria for abatement by the ADOT *Arizona Department of Transportation Noise Abatement Policy* (2002) and an agreement will be reached with the property owners on whether or not a sound barrier will be acceptable and/or constructed. The contractor will be required to meet the noise abatement requirements of Section 104.08 of the *Arizona Department of Transportation Standard Specifications for Road and Bridge Construction* (2000 Edition) during the roadway construction.

**Response to Comment B4-21**

Cowles fringe-toed lizard is included on the Arizona Game and Fish Department's list of Wildlife of Special Concern in Arizona, although this designation does not grant any legal protection. As discussed on page 99 of the *August 2005, FEA*, the ASH will impact suitable habitat for the Cowles fringe-toed lizard in an area of partially stabilized, low sand

**Response to Comment B4-21 (cont'd)**

dunes near County 19th Street and Avenue 4E.

Approximately 63 acres of habitat for the Cowles fringe-toed lizard will be lost to the ASH right-of-way. A small area of habitat to the west of the ASH alignment will be fragmented from suitable habitat to the east, and Cowles fringe-toed lizards may be impacted during construction and as a result of traffic operations on the ASH. While there will likely be direct, secondary, and cumulative impacts on this species and its habitat in the project area, the partially stabilized sand dunes present in the project area do not represent the preferred active dune habitat of this species, which occurs to the east of the project area on the Yuma and Mohawk Dunes. The habitat area that will be fragmented to the west of the ASH is the site of an existing commercial sand and gravel operation and is not critical to the conservation of this species.

As mentioned in the *August 2005, FEA*, the alignment modifications that have been made on the BMGR have decreased the amount of fringe-toed lizard habitat that will be lost and mitigation measures that will be implemented to protect the FTHL will also reduce impacts to the Cowles fringe-toed lizard. Measures such as constructing lizard barrier fencing will reduce roadway impacts to other lizards and terrestrial wildlife in general. The physical boundary provided by the ASH right-of-way and lizard barrier fencing may also benefit Cowles fringe-toed lizards in the Yuma Desert MA. No additional mitigation measures have been identified that will specifically benefit the Cowles fringe-toed lizard. It was determined in the *August 2005, FEA* that the ASH may impact individuals of Cowles fringe-toed lizard, but is not likely to result in a trend toward federal listing or loss of viability; this level of impact is not considered to be significant because it is low in both magnitude and intensity.

**Response to Comment B4-21 (cont'd)**

Sand food is more commonly found in association with active sand dunes, such as the Algodones Dunes to the west of the project area in California, although potentially suitable habitat occurs in the project area in locations with sandy soil and native vegetation. All areas of potentially suitable habitat within the proposed SR 195 right-of-way were surveyed for the presence of sand food in April 2006 and a small population of sand food was detected in the disturbed road shoulder of an existing roadway, within 5–20 feet of the existing pavement edge. A total of 26 individual sand food inflorescences were recorded; it is difficult to determine whether individual inflorescences are from the same sand food plant or from different plants without excavating the root system of the host plant so, as a result, the true number of sand food plants present may be fewer than 26. Additional coordination with the Arizona Department of Agriculture has resulted in the adoption of mitigation measures to address impacts to sand food in the project area (refer to the Arizona Department of Agriculture's July 28, 2005, letter outlining the mitigation recommendations in Appendix A). The ADOT Environmental Planning Group will check with the Arizona Department of Agriculture to determine if any organizations are interested in transplanting or collecting sand food from the project area for research purposes. If there is no appropriate party interested in taking the sand food plants from the project area for research, the contractor shall move any individuals found within the construction area to the perimeter of the construction area to spread seed to the new road perimeter. The contractor shall move these individuals by scooping a cubic yard of substrate surrounding each plant and stockpiling the material to spread within 20 feet of the new roadway edge when construction is completed. In addition, the contractor shall stockpile the top 6 inches of topsoil removed from the area of sand food occurrence for rehabilitation of the right-of-way following construction.

**Response to Comment B4-22**

The intent of listing species that are common in the project area is to provide an overview of the project area and give some insight as to the species associations that are present. Inclusion of the mourning dove in this list will not change the analysis of effects to wildlife, nor will it meaningfully add to the description in this section.

Species-specific surveys, as well as numerous reconnaissance surveys, have been conducted in the project area. For example, a survey conducted in 1995 covered thirty 0.5-mile-long transects in the ASH project area. In addition to surveys in the project area, the Arizona Game and Fish Department's Heritage Database was queried several times during the planning process for an updated list of special status species known to occur in the project area

**Response to Comment B4-23**

Special status species are typically the focus of NEPA-related surveys and analyses, although non-special status species are also noted as they provide insight into species associations and ecosystem functions and values. Non-special status species may be analyzed in more detail when critical resources such as migration corridors and critical winter ranges will be impacted. The survey conducted in 1995 that supported the September 29, 1995, Biological Assessment focused on the ASH alignment that was proposed at that time; at that time the route continued along County 23rd Street to the existing port-of-entry in San Luis as opposed to turning south at Avenue E and continuing towards the International Border.

The alignment that is currently under consideration was visited again in 2002, 2004, 2005, and 2006 to gather information for updated environmental analyses. An updated Biological Evaluation that evaluated the current alignment was prepared for the project in 2002.

**Response to Comment B4-24**

The California brown pelican is a coastal bird that is typically found within a few miles of the coastline along the south Atlantic and Gulf coasts. While wayward California brown pelicans have been documented in Arizona, these sightings are relatively uncommon and typically occur along lakes and rivers. The California brown pelican was addressed in the most recent Biological Evaluation for the project, where it was determined that suitable habitat for this species is not present in the ASH project area. Because the ASH project area does not contain any aquatic habitats that could be used by the California brown pelican in any of its life stages, there would be no meaningful analysis to include in the *August 2005, FEA*.

**Response to Comment B4-25**

Sentence has been clarified to read, “The new roadway will not result in the destruction or disruption of any man-made resources, aesthetic values, community cohesion or a community’s economic viability, or the availability of public and private facilities and services.”

**Response to Comment B4-26**

Refer to Response to Comment B4-7.

An EIS is prepared when the proposed action will have a significant impact on the environment. FHWA does not believe there is a legitimate basis for preparing an EIS. The term “likelihood” that was used in the text on page 1 of the *August 2005, FEA* was misinterpreted. Typically, a DEA will use non-determining language to ensure there is no misunderstanding by the public that a decision has been made prior to the issuance of a Finding of No Significant Impact (FONSI). Since the *August 2005, FEA* was also released for review by the public, the term “likelihood” was included in the text to show that a final determination had

**B4**

B4-27 We also note that the Federal Highway Administration Technical Advisory T 66440.8A of October 30, 1987 on *Guidance for Preparing and Processing Environmental and Section 4(F) Documents* cites the CEQ in recommending that “the length of EAs usually be less than 15 pages.” (U.S. Federal Highway Administration 1987:6). The FEA is approximately 150 pages, ten times the length recommended for EAs. The appendices are approximately an additional 450 pages. The length of the EA in itself argues that the appropriate level of analysis is an EIS, not an EA.

**Analysis of Alternatives is Inadequate, Arbitrary, and Capricious**

B4-28 Although we contend above that an EIS is the required level of analysis for the proposed action and its alternatives, even if an EA is prepared it is still subject, by 40 CFR 1508.9(b) and Section 102(2)(E) of the National Environmental Policy Act of 1969, as amended, to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” Yet the FEA fails to analyze the effects of the required No Action Alternative and further rejects all other alternatives except the proposed alternative for further analysis. We have read many environmental assessments, and we have never seen one that ignores the No Action Alternative the way this FEA does.

B4-29 The FEA rejects alternatives that which use Avenue D as a route (FEA, 1988 Corridor Option F, pp. 16-17; 1988 Recommended ASH Corridor, pp. 17-18, 2003 ASH Western Corridor, pp. 34-37.) Although we are not necessarily advocating a route which would use Avenue D for an Area Service Highway, and notwithstanding your reasons for dropping these alternatives from further analysis, Map 1 of the *City of Yuma Major Roadways Plan 2005* (City of Yuma 2005) shows an expressway along County 14<sup>th</sup> which turns to the north at Avenue D and crosses the Colorado River into California to join I-8. It would be appropriate to fully analyze an alternative that would use Avenue D as a route given that the City of Yuma sees it as a viable route.

B4-30 It is clear from reading the letters in Appendix A that a number of agencies requested consideration of a broader range of alternatives. This includes the Bureau of Land Management (FEA, p. A-2). The U.S. Fish & Wildlife Service indicated that they would like to see the highway routed to the north and west adjoining agricultural land (FEA, p. A-8). This alternative was never fully analyzed. The Arizona Game & Fish Department at G-A-8 several times asked for a fuller consideration of alternatives: “The Department and other agencies have previously requested that the project proponents consider other alignments to avoid FTHL habitat. The Department believes the DEA does not adequately consider alternative routes.” The Marine Corps called for “solid scientific analysis, with solid alternatives developed” (FEA, p. G-A-5) which is hardly what has been done in the FEA where all alternatives are dismissed from further analysis. The Marine Corps further states in

**Response to Comment B4-26 (cont’d)**

not yet been made, because a FONSI has not yet been issued. The FHWA does not believe there are significant impacts from the ASH and, furthermore, an EIS is not warranted.

**Response to Comment B4-27**

According to FHWA guidance an EA is prepared by the applicant in consultation with the Administration for each action that is not a CE and does not clearly require the preparation of an EIS, or where the Administration believes an EA would assist in determining the need for an EIS. Document length is not a determining factor in the decision of appropriate NEPA-documentation.

Additionally, while FHWA *Project Development and Documentation Overview* (1992) guidance does state that “The CEQ [Council on Environmental Quality] suggests that EAs should be only 10 to 15 pages in length;” FHWA acknowledges that “It is often not possible to stay within these page limits, especially if information related compliance with other environmental requirements is included.” FHWA bases its decision to prepare an EIS on the identification of significant impacts—not document length.

**Response to Comment B4-28**

The FHWA Technical Advisory T6640.8A dated October 3, 1987, Section II.C. Alternatives states, “The EA does not need to evaluate in detail all reasonable alternatives for the project, and may be prepared for one or more build alternatives.” Therefore, the No Action Alternative does not need to be carried forward in the EA. The No Action Alternative was considered and is discussed in Section II.B.2. No Action Alternative of the *August 2005, FEA*.

**B4**

their comments on the DEA at G-A-5 to G-A-6 of the FEA that “. . . the only alternative analyzed is the Preferred Alternative. Not good. It's truly the rare project where no other alternative would meet the P&N. The BLM stated as much in their 1996 letter re: this proposed project . . .” Yet the FEA rejected all alternatives save the Proposed Alternative from full analysis for various spurious reasons mentioned in these comments.

B4-31

In addition, in our section above on purpose and need, we have identified other alternatives, such as a scaled-down project using existing routes and applying more localized solutions as potential alternatives. These were not considered in the FEA and are justified for the reasons given in the section above on purpose and need.

B4-32

A rail alternative was briefly discussed and rejected (FEA, p. 9), however, the FEA fails to consider a rail alternative that would use existing tracks from Yuma to the south as a basis. The tracks would need to be extended the remainder of the way to San Luis.

**FHWA Must Conference with FWS on the FTHL As a Result of Tucson Herpetological Society et al. vs. Norton and Williams**

B4-33

On August 30, 2005, U.S. District Judge Neil V. Wake issued an order in Tucson Herpetological Society et al. vs. Gale Norton, in her official capacity of Secretary of the Interior, and Steven Williams, in his official capacity of Director of the U.S. Fish and Wildlife Service (No. CV-04-0075-PHX-NVW). Judge Wake ordered that the Fish and Wildlife Service set aside its order to withdraw the proposed rule to list the Flat-tailed Horned Lizard as a threatened species. Once again, the FTHL is proposed for listing. As a result, FHWA must reinstate conferencing with FWS on the FTHL (50 CFR 402.10). Since FHWA previously did a formal consultation with FWS on the FTHL before the proposed listing was withdrawn, this would again be the appropriate process. The return of the FTHL to proposed listing status also raises the level of significance of the FTHL, providing further reason for doing an EIS.

**A Section 4(f) Analysis Is Required**

49 USC 303(a) states that it is U.S. Government policy that the natural beauty of the countryside and, among other areas, “wildlife and waterfowl refuges” be preserved. In order to carry out this goal, 49 USC 303(c) requires that the Secretary of Transportation may approve a transportation program or project requiring use of the land of a wildlife and waterfowl refuge of national, state, or local significance only if there is no prudent and feasible alternative to using the land and that the program or project include planning to minimize harm to the subject area resulting from the use.

B4-34

We contend that the Yuma Desert Management Area for the FTHL meets the criteria of a “wildlife and waterfowl refuge” and that the project proponents are thus required to do a Section 4(f) analysis and planning, which the FEA does not do. The term “wildlife or waterfowl refuge” in the law (49 USC 303) is general and is nowhere

**Response to Comment B4-29**

Alternatives that were determined to not meet the purpose and need of the project (e.g., 1988 Corridor Option F), or which will meet the purpose and need but were determined to potentially have greater environmental impacts were eliminated from detailed analysis.

The 2005 Major Roadways plan (map link attached) has the Yuma Expressway identified in the Major Roadways Plan. The Yuma Expressway is not designed, however; there is a project in the Capital Improvement Program (CIP) for an Expressways Access Studies (CIP 5.0582). The Yuma Expressway does use Avenue D to connect to a future interchange in California. Any design or construction of this route should be considered long range.

**Response to Comment B4-30**

The Preferred Alternative as identified in the DEA, ADOT, FHWA, YMPO, and MCASY was the result of many years of public and agency input. San Luis and the member agencies of the YMPO supported this identification. Additionally, Reclamation, Bureau of Land Management, and the US Navy are cooperating agencies for the EA, and have been an integral part of the project development.

It is FHWA's opinion that the *August 2005, FEA* properly analyzes a range of alternatives. Please refer to Section II. Alternatives Considered of the *August 2005, FEA*.

**Response to Comment B4-31**

ASH will be the only route that could provide an access controlled divided alignment from the port of entry to I-8, without going through urbanized areas. The ASH will provide a different type of access-controlled facility than currently exists in the local roadway network. The ASH will provide a corridor suitable for commercial vehicles that will remove commercial through traffic from populated areas.

**Response to Comment B4-31 (cont'd)**

No improvements could be made to the existing network that would provide a similar access controlled facility. The ASH will be an access controlled divided highway providing higher speeds, no signalized intersections, and reduced travel time.

**Response to Comment B4-32**

As discussed on page 9, of the *August 2005, FEA*, because the ASH will be a major transportation facility and travel corridor, the potential for accommodating rail transportation was addressed in the MIS. The viability of use of the ASH corridor for rail is difficult to gauge because of the lack of political initiative at this time and opposition from MCASY. Currently, there is no Mexican rail service into the neighboring community of San Luis Rio Colorado, Sonora, Mexico. The nearest service is approximately 28 miles south of San Luis Rio Colorado. On the United States side of the border, the Union Pacific railroad tracks lie along I-8, about 26 miles north of San Luis, near the northern limits of the ASH. If the ASH alignment were to be used for rail freight, in the absence of rail connections in Mexico, an intermodal transfer facility will be required in San Luis and a railroad connection facility will be needed in the vicinity of Araby Road and the Union Pacific Railroad line. Because of the lack of such support facilities, rail freight transportation along the ASH corridor is not considered viable at this time.

**Response to Comment B4-33**

As a result of the court decision that set aside USFWS's withdrawal of the proposal to list the FTHL, FHWA submitted a written request to USFWS for formal conference under Section 7 of the ESA on September 8, 2005, in order to address the FTHL as if it were a listed species. USFWS has been actively involved in the development and approval of measures to mitigate potential



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B4-34  
(cont'd)

restricted to wildlife and waterfowl refuges under the administration of the U.S. Fish & Wildlife Service. The Yuma Desert Management Area for the FTHL clearly meets the criteria of a "wildlife and waterfowl refuge" as it is intended to provide a refuge for the FTHL, a species of wildlife.

Yet the FEA (p. 64) states that "There are no publicly owned parks, recreation areas, or wildlife or waterfowl refuges or national, state, or local significance within the project area." This is clearly in error and a Section 4(f) analysis and process needs to be part of the FEA or it will be invalid on this ground.

**Failure to Coordinate with All Relevant Native American Nations and Organizations**

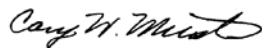
B4-35

According to the FEA (p. 123), coordination letters were sent to a number of Native American nations and organizations. However, some who have expressed an interest in actions proposed for southwest Arizona were excluded. The proposed Wellton-Mohawk Generating Facility (electric power generating plant) is not all that far from the proposed route of the YASH, yet a much larger number of Native American Nations and organizations in Arizona and southeastern California were contacted, including the Navajo Nation, which has shown an interest in the cultural resources and traditional cultural properties of southwestern Arizona. We believe that all of the Native American Nations and organizations listed in the *Wellton-Mohawk Generating Facility Draft Environmental Impact Statement* (United States Department of Energy Western Power Administration 2005:5-3, 5-4) should have been contacted, and more, such as the Camp Verde Yavapai. Because of its failure to coordinate with all relevant Native American Nations and organizations, the FEA is inadequate. The FEA cannot claim that Native American concerns have been resolved if some nations and organizations are excluded.

For all the above reasons, we contend that an environmental impact statement is still the appropriate level of analysis for this project. The appropriate decision by FHWA at this point would be to use the FEA as a means of determining that an EIS is necessary. Nevertheless, we also contend that from the beginning of this project, it should have been clear from FHWA's own criteria that an EIS was the appropriate level of analysis.

Thank you for the opportunity to comment.

Sincerely,



Cary Meister  
Conservation Chair

Cc: Diane Simpson-Colebank  
Steve Thomas

**Response to Comment B4-33 (cont'd)**

impacts to the FTHL from the ASH, and the project is in full compliance with the requirements of the FTHL RMS. USFWS issued a draft Conference Opinion on October 14, 2005. The USFWS draft conference opinion is available at the offices of FHWA and ADOT. USFWS was unable to complete formal conference for the FTHL because the proposal to list the species was withdrawn on June 28, 2006, and a final Conference Opinion was not issued. USFWS provided a response letter to FHWA on December 20, 2006 (attached), in which USFWS stated that the proposal to list the FTHL had been withdrawn and reiterated ADOT and FHWA's previous commitments to FTHL mitigation under the FTHL Conservation Agreement. Furthermore, at the request of ADOT and FHWA, USFWS sent an additional letter documenting the close of the USFWS coordination process, taking into account the current legal status of the FTHL. Should the legal status of the FTHL elevate prior to the completion of the ASH, FHWA and ADOT will re-open dialogue with the USFWS and will fulfill all legal responsibilities under the Endangered Species Act.

**Response to Comment B4-34**

The Center for Biological Diversity and the Yuma Audubon Society contend that the FTHL Management Area (MA) is a wildlife refuge of local, regional, or national significance. Therefore, the MA would be subject to Section 4(f) of the Department of Transportation Act in which the taking of land from a wildlife or waterfowl refuge of nation, state, or local significance may be approved only if there is no prudent and feasible alternative to using that land and the program or project includes all possible planning to minimize harm to the refuge.

**B4**  
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**Response to Comment B4-34 (cont'd)**

Two separate points must be established in the discussion: the ASH is not within the MA and the MA is not a Section 4(f) resource. The 2003 FTHL Rangewide Management Strategy states in Planning Action 1.1, "if the proposed Area Service Highway is constructed along a portion of the boundary of the MA, the east and south side of the right-of-way will be the new western and northern boundary of the MA, as appropriate." In addition, Planning Action 2.2.4 states, "the proposed Area Service Highway and its right-of-way are outside the Yuma Desert MA." Land used for the MA begins at the boundary of the ASH from initial planning of the MA and therefore the ASH is not within the boundary of the MA.

In addition, publicly owned land is considered to be a wildlife refuge when the land has been officially designated as such by a Federal, State, or local agency and officials of these governmental entities, having jurisdiction over the land, determined that the major purpose and function is for a refuge. Incidental, secondary, occasional or dispersed refuge activities do not constitute a major purpose. In this case, the primary purpose of the land that is contained in the MA is not for refuge purposes. The MA was established on lands that have already been designated for multiple uses besides being a management area for the FTHL. The MA is on federally owned lands of the Bureau of Reclamation and the US Department of the Navy, which maintain previous land use designations as the primary purpose and function for the land.

**Response to Comment B4-35**

Pursuant to 36 CFR 800.3(f)(2), FHWA and ADOT have made a reasonable and good faith effort to identify Native American tribes that may attach religious or cultural significance to historic properties within the area of potential effect for the Yuma Area Service Highway. Consultation

**Response to Comment B4-35 (cont'd)**

was conducted with all tribes who claim tribal affinity within the Area of Potential Effect, as determined by consultation with the Arizona State Museum's tribal claim areas, which are identified for purposes of complying with the Native American Graves Protection and Repatriation Act (NAGPRA), among others acts. In addition, several tribes not claiming affinity with historic properties within the Area of Potential Effect were also consulted as parties who have expressed interest in the project and/or project area. Consultation with the State Historic Preservation Office did not identify any additional tribes that may have an interest in the project area, and no written requests were received from any tribe that wished to be included as a consulting party. Therefore, FHWA and ADOT have complied with the letter and spirit of the law regarding involvement of Native American tribes in Section 106 consultation.

It is FHWA and ADOT policy to identify consulting parties by individual project, and not by consultation done by other agencies for other projects.